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POLITICAL SCIENCE QUARTERLY.

THE MODERN USE OF INJUNCTIONS.[1]

WE have all felt that there is in the public mind much doubt and uneasiness concerning the novel attitude taken by the federal courts, of active interference in the labor troubles of the past two years. This doubt, though shared by many lawyers, is not confined to them; it exists more strongly, if less definitely, in the minds of the thoughtful public as well as of the laborers themselves. I believe it is never wise to ignore a general sentiment of this magnitude; for I believe that our race has inherited a general sense of liberty which, in a thousand years of transmission, has grown almost to an instinct that warns the people of a threatened invasion of their liberties even before it becomes the subject of cognizance by courts and legislators. And I believe that in the particular case at hand this disquiet or doubt is reasonable; that it may be formulated and based upon important principles; and that it may be justified by a reference to the facts which gave it rise.

What are the facts? Briefly these:

We have seen, in private law-suits between individuals or corporations, courts of equity — civil, not criminal, courts — invoked to restrain, not alone parties to the suits, but anybody, the whole world, with or without actual notice of a court order or injunction, not merely from interfering with property which is the subject of the suits, but also from committing or con-

[1] Address delivered March 15, 1895, to the Young Men's Democratic Club of Massachusetts.

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spiring to commit, or aiding or advising others to commit, acts which are criminal; and sometimes only on the ground that they are criminal acts — criminal at common law, or made so by the recent statutes known as the Anti-Trust Law and the Interstate Commerce Law. We have seen more: we have seen persons committing, or about to commit, or said to be about to commit, such acts, arrested by these civil courts, deprived of their liberty and punished by imprisonment; and this, as in the Debs case and others, *after* the emergency which furnished the excuse for invoking the protective jurisdiction of the equity court has long gone by. And we have seen persons so punished without the usual safeguards of liberty afforded by the criminal law — without indictment, without right to counsel, without being confronted with witnesses, without trial by jury — and sentenced without uniform statute, at the discretion of the judge.

We have seen more: we have seen courts, not content with ordering all the world what not to do, order at a word the ten or twenty thousand employees of a railroad system to carry out each and every the definite or indefinite duties of their employment as directed by any of their superior officers, or by receivers of the courts themselves, so that for any failure or omission or merely negative act on the part of one of these employees, he may be summarily brought into court and punished, either at that time or later, as the court may find leisure to sentence or its attorneys to file complaints. Take one example of many. Judge Ross, in the case of the Southern California Railroad *vs.* Rutherford, where the bill alleged that the defendants continued in the employment of the complainant company, and yet refused to perform their regular and accustomed duties as such employees, said:

> It is manifest that for this state of affairs the law — neither civil nor criminal — affords an adequate remedy. But the proud boast of equity is: *Ubi jus, ibi remedium.* It is the maxim which forms the root of all equitable decisions. Why should not men who remain in the employment of another perform the duties they contract and engage to perform? It is certainly just and right that they should do

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so, or else quit the employment. [And in conclusion,] I shall award an injunction requiring the defendants to perform all of their regular and accustomed duties so long as they remain in the employment of the complainant company, which injunction, it may be as well to state, will be strictly and rigidly enforced.[1]

We have seen yet more. By the act of 1890, commonly known as the Anti-Trust Law, it is declared that "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states," is illegal; and by the fourth section, the attorney-general, or any district attorney, upon the information of any individual, is authorized to institute proceedings in equity, in the name of the United States, to prevent and restrain violations of the act. Furthermore, by the Interstate Commerce Act of 1887 it is made a criminal offense for railroads, their officers or employees, to refuse to perform their duties as common carriers, and to refuse to receive the cars and passengers of other railroads or companies; as a result of this a strike of such employees becomes in effect also a conspiracy against interstate commerce.

The first attempt to enforce the Anti-Trust Law was made in a case here in Boston, before Judge Putnam of the federal court. Judge Putnam wisely refused to extend the meaning of this act beyond its expressed words, and said: "It is not to be presumed that Congress intended to extend the jurisdiction of the courts of the United States to repressing strikes and boycotts, without very clear language."[2] If the courts had stopped there, there would be little need for this address. But since then what changes have happened!

The Attorney-General of the United States, or his district attorneys, acting for the United States in the exercise of its sovereignty as a nation, has sued out injunctions in nearly every large city west of the Allegheny Mountains. Injunction writs have covered the sides of cars; deputy marshals and federal soldiers have patrolled railway yards; chancery process has been executed by bullets and bayonets.

[1] S. C. R. R. Co. *vs.* Rutherford, 62 Cal., 796.
[2] U. S. *vs.* Patterson, 55 Fed. Rep., 641.

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Equity jurisdiction has passed from the theory of public rights to the domain of political prerogative. In 1888 the basis of jurisdiction was the protection of the private right of civil property; in 1893, it was the preservation of public rights; in 1894, it has become the enforcement of political powers.[1]

From being applied to parties to a suit, the process of contempt has come to be applied to large bodies of men who may never have heard of the suit which gave it rise. For instance, the Chicago "omnibus bill" of last summer was filed to prevent interference with twenty-three great railroad systems, and the injunction issued not only against several members of the American Railway Union by name, but against as many thousands unnamed; and, to prevent a possible confusion of identity in the defendants, it was further directed to "all other persons whomsoever."

The history of jurisprudence surely furnishes no precedent in which the chancery has called out the military in aid of an injunction writ. The Anti-Trust Law has not yet, it is true, reached its final interpretation in the supreme court; but it is fairly a subject of public discussion. The judges themselves who issued these injunctions and sentenced offenders to imprisonment for contempt of their orders, did so avowedly on the ground that the common law had failed — that the peace of the country demanded extraordinary remedies. Judge Woods, at Chicago, is reported to have said: "The only reason for issuing an order at all is that it is a means of meeting the present emergency, for the process of arrest and indictment is too slow."[2]

Now let us formulate the objections to all this; and I think we shall find that the public anxiety has some legal ground. Briefly, the objections are three:

1. This course of things does away with the criminal law and its safeguards of indictment, proof by witnesses, jury trial, and a fixed and uniform punishment. Most of these offenses might well have been the subject of criminal prosecution; and the bill of rights of our constitution says that in all criminal

[1] C. C. Allen, Address before the American Bar Association, 1894.
[2] St. Louis *Globe-Democrat*, July 3, 1894.

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prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed; to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

2. It makes the courts no longer judicial, but a part (and it bids fair to be a most important part) of the executive branch of government. More briefly and picturesquely: the federal courts may thus grow into mere star-chambers and run the country — as they already run nearly half the railroads.

3. It tends to make our judiciary either tyrannical or contemptible. If we do not fall under a tyranny, such as might have existed in the England of Charles I, or such as does exist in the South America of to-day, we shall fall into the almost worse plight of finding an injunction of our highest courts a mere *brutum fulmen* — an empty threat, a jest and a by-word; so that through their own contempt process the courts themselves will be brought into contempt. An example or two will illustrate this possibility.

One such injunction as these I have mentioned was issued by Judge Beatty in the Cœur d'Alene mining-right cases. That injunction stated that a wrong existed, that unoffending citizens had been maltreated, and that the courts might successfully be invoked to bring relief; and it was ordered that the defendants be restrained from entering upon the complainant's mines, or from interfering with the working thereof, or by the use of force, threats or intimidations, or by other means, from interfering with or preventing complainant's employees from working upon its mines. That was granted on the 12th of July, 1892. What effect did it have? On that very night the non-union miners who had been ordered out of that mining district and were escaping across the mountain range through the snow, were attacked, despite the injunction, by the striking miners themselves and seventy men were shot down or drowned in the river, save perhaps some few that escaped back into the snows of the

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mountains; and this was just twelve hours before the federal troops arrived. So much for the tragedy of the ineffectual injunction; now turn to its comedy.

In West Virginia, in the summer of 1894, a similar injunction was granted to the Baltimore and Ohio railroad, restraining strikers from preventing the moving of cars. I quote from its attorney, Mr. Joel W. Tyler, of Ohio. He says:

> So far as we have had any trouble, it was not in getting our injunction. It was not any trouble to get a swarm of soldiers of the state, as well as federal soldiers, to surround our cars. We got them along the Ohio river all ready to protect those cars and allow them to start; but when we supposed everything was ready and we were going to move that coal, lo! a squadron of women appeared, starting from the other side of Wheeling Creek, wading through the creek, and they got aboard those cars and pulled out the coupling-pins and threw them in the river, and the wonder was that they had not a solitary particle of wet on any of their garments. The soldiers could not do anything against those women, and of course we could not move the cars without coupling-pins.

So much for the comedy of the useless injunction.

There is nothing new under the sun. Just as trusts were discovered, objected to and legislated against in England in 1354, you may make the curious discovery that precisely this same substitution of equity for common-law methods of dealing with crimes has occurred before, and that some five hundred years ago. It was resorted to in England then, for the same reasons, with the same objections on the part of the people and the common law courts, as here to-day, and with, I hope, the same results. But it is still more curious that one side is now invoking the power of the king, the special prerogative of the sovereign, upon the same old plea that the common law, with whose safeguards that prerogative interferes, is no longer adequate to protect the public or the state against disorder and oppression. For our courts are the direct successors to that extraordinary power of special help or personal mandate which is derived from the English sovereign (to whom our state succeeds) through his chancellor. In the old times this equity

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power of injunction was commonly invoked to protect the weak against the strong, who overrode the slower remedies of the common law; it is now invoked by the few against the many. Yet the justification it may have to-day must rest on the same old plea, that the owner of property, the individual — or the woman traveler whose train is deserted by strikers and who is left to starve and freeze on a prairie — is really the weak, while the organized thousands of strikers have become the strong.

I cannot show you this more vividly than by calling your attention to a few passages in one of the oldest books on the history of equity courts. Our courts of equity are the successors to the powers and jurisdiction of the English chancellor; and the English chancellor was originally the representative of the king himself, the officer to whom the monarch deputed his powers and authority by way of special grace, to do justice outside the ordinary process of the courts. Spence tells us that in 1327 — which, by the way, was the very time when trial by jury as known to us was first established, that is, when the jury ceased to be the witnesses of the crime, and became a jury to find facts upon the evidence of the witnesses, as we have it to-day — in 1327 King Edward III found it necessary to adopt some more effectual measures of police than those which already existed. For this purpose justices of the peace were first instituted throughout the country, with power to take security for the peace and bind over parties who threatened offense. Fifty years later, in the reign of Richard II, it was found necessary to provide further measures for repressing forcible entries on lands. The course of justice was interrupted, and all these provisions were rendered in a great degree ineffectual by the lawless spirit of the times. In 1382 the commons complained to the king of grievous oppressions caused by the power of great barons, who rendered the remedies of the common-law courts of no avail. Accordingly the judges of these courts themselves were placed under the special supervision of the chancellor, and the chancellor began to exercise his authority in repressing disorderly ob-

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structions to the course of law, and in affording civil remedy in cases of outrage which for any reason whatever could not be effectually redressed through the ordinary tribunals. Thereupon, however, the commons took great umbrage at the exercise of such authority on the part of the chancellor, claiming that his jurisdiction was an interference with the common law; but the king persevered, stating that he would preserve his prerogative; and a resort to the chancellor under his ordinary jurisdiction was thus secured for the poor, the weak and the friendless, to protect them from the injuries to which they were exposed.[1]

Here already, then, are the two principles established: the common law courts and the ordinary criminal process, on the one hand, and the extraordinary remedies of chancery or the equity courts, on the other. Spence points out the special advantages in going before the chancellor — the same that exist to-day, and that caused the recourse to the federal judges in the strike last summer. First there is the power of chancery to exercise what is called preventive or protective jurisdiction, that is, to prohibit the doing of certain acts before the acts have been committed and the harm has been done; and, further, there is the practice in chancery of proving facts by personal examination of the parties, or upon written affidavits, and the power of awarding compensation to the person injured by a criminal offense. Even the court of Star Chamber had originally a similar jurisdiction, and it was first used to prevent cases of oppression and other exorbitant offenses of great men, where, as Lord Coke says, inferior judges would, in respect to the greatness of the offenders, be afraid to take jurisdiction. Coke particularly mentions as part of the jurisdiction of Star Chamber the suppression of those who spread false and dangerous rumors, of frauds, deceits, conspiracies, and of great and horrible riots, routs and unlawful assemblies, leaving ordinary offenses to the courts of common law; and he complains of it as "a court of criminal equity."

Thus nearly five hundred years ago was this modern equity power established — founded then, as now, on the inefficiency of

[1] 1 Spence, 342–4.

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the ordinary tribunals to do complete justice in matters which were really criminal. And Clarendon says that while the court of Star Chamber was gravely and moderately governed, it was an excellent expedient to preserve the dignity of the king, and the peace and security of the kingdom; which is precisely the same argument that is now made to defend the jurisdiction assumed by the federal judges last summer. The court of Star Chamber, as Spence explains, was perverted from its original purposes; and, having become odious by the tyrannical exercise of its powers, it was abolished by statute in the time of Charles I, just before the Commonwealth was established. But for two or three hundred years previous to that we find existing this old chancery jurisdiction, which has now been revived in our federal courts largely in consequence of the Anti-Trust Act. The court of chancery could require surety for the good behavior of any person from whom offense was apprehended, and could command anybody having notice of its order to refrain from interfering with anybody's rights; and very often in these old cases a bill prayed both for an injunction and for surety to keep the peace — which is practically the kind of decree that was granted by the circuit court for Illinois last summer against Debs and others.[1]

The great advantage of the court of chancery, says Spence, was that no writ imposed any fetter of form; and the court, not being tied to forms, was able to modify its decrees to suit particular exigencies, to direct many things to be mutually done and suffered, and to outline the conduct to be observed respectively by the several parties to a suit; and the method of enforcing these orders was by confinement in prison. This describes precisely the kind of decree granted by Judge Ross in California last summer against all the employees of the Southern California Railroad. So old this matter really is. Spence tells us that at a very early period the Norman sovereigns claimed and exercised the right of interfering for the prevention of injury to property; and Lord Coke notices how far preferable is preventive to remedial justice — that is, an order of the chan-

[1] U. S. *vs.* Debs, and others, 64 Fed. Rep., 724.

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cellor which prescribes what people shall or shall not do, to the slow and unsatisfactory remedy of trial and punishment by common law after the thing has been done. Spence, in speaking of the practice about the time of Richard II, says that the court of chancery was applied to to afford redress for outrages, assaults, trespasses, forcible entries, *riotous proceedings* and *illegal seizures of property;* and the bills commonly alleged that the common law could not help, or that the plaintiff could not obtain redress at common law by reason of the powers or numbers of the persons complained of, or that they were supported by the sheriff, or some person holding office (the prototype, for instance, of the governor of Illinois).

Could any words more exactly than the allegations of these bills drawn five hundred years ago, embody the arguments of the Western federal courts last summer? But now note that Spence goes on to say that at the time he writes — that is, fifty years ago — the court of chancery in exercising such jurisdiction would be regarded as assuming an unwarrantable authority, since many of the matters were regulated by the police; and that only in looking back upon the state of society at the earlier time could the conclusion be reached that such jurisdiction was as necessary then as it had since become superfluous.

Now the precise question I wish to ask is, whether it can really be true that we have so retrograded in our civilization as to go back again to that necessity? Spence tells us that the old civil wars in England greatly increased the lawless violence already existing, and that down to the time of Elizabeth the court of chancery had to intervene and apply its coercive power; but that when an improved state of society diminished the frequency of crime and the state of the country permitted the powers of the magistracy and of the ordinary tribunals to be efficiently exerted for the repression of outrage and violence, the necessity for the interference of the court of chancery in such matters ceased; it renounced its jurisdiction, and since about the time of Queen Elizabeth has refused to exercise any jurisdiction for the repression of crimes. That is,

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from about 1590 until 1894, just three hundred years, this extraordinary jurisdiction in the equity courts has been given up or has lain dormant.

So far, history. And I think you will say it has but repeated itself. Are we to go back? Have liberty and property again grown so insecure under the common law that the extraordinary power of the sovereign acting through his chancellor — that is, of the United States government acting through its equity courts — is again to be invoked? And will the federal government, stretching to the last point of prerogative the phrase of the constitution giving it power to regulate commerce among the several states, — for the meaning of those simple words has grown, from the mere prohibition of imposts and interstate duties or taxes upon the carrier, to the control of the reward of the carrier; and from that (as the United States Labor Commissioner demands), to the wages of the carrier's servants; and from that, to criminal jurisdiction over all persons concerned in transportation; and from that, now, to an executive ordering of the whole business by the federal courts, — will the federal government, through its courts or the statutes of Congress, reply to popular criticism as did King Richard II in 1382 to the Commons: The sovereign will preserve his prerogative?

Before suggesting remedies, I want to call to mind again the fact that the revival of these old equity powers has been caused chiefly by one particular law, passed by the Congress of the United States four years since supposedly in the interest of the people and of the laborer, and known as the Anti-Trust Law. A striking example this, of the danger of extraordinary legislation, whether demanded by the masses or by the classes! Were it not for this act the question would be much simpler; but this statute expressly provides in its fourth section that any conspiracy or combination to restrain interstate trade *shall* be prevented and restrained by the United States directly, acting through its attorney-general. Up to this time, I think I may state that there has been no legal authority in the United States under which the government

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could directly institute a suit in equity against men, or any combination of men, whether laborers or railway directors, who threatened such offenses; but the effect of this most radical and far-reaching statute has been to impose upon every receiver of an insolvent corporation, and upon every district attorney in the country, on the complaint of any citizen, when a railroad is concerned, the duty of bringing a suit in the name of the national government, whenever, by reason of labor troubles, any interference with the management of such corporations is effected or attempted. Now it is at least arguable that this part of the statute should be repealed. I think it is dangerous to require the national government to interfere by this extraordinary equity remedy, abandoned, as I have tried to show, these three hundred years, in any of the great questions caused by combinations either of labor or of capital. I agree with Mr. Wright that, if this goes on, the nation will have to own and run the railroads in theory as well as in fact; and Democrats at least should not believe that this is any part of the duties of our national government. Nor do I think the machinery of any true democratic government is arbitrary and tyrannical enough to stand such a strain.

Leaving out the question of this Anti-Trust Law and its provisions, and the Interstate Commerce Law, which, on one short clause in the Constitution of the United States that "Congress shall have power to regulate commerce among the several states," hang all this extraordinary jurisdiction and law-making — leaving aside these two radical and extraordinary statutes, it seems as if the question we have asked might be thus solved:

First. Let the courts of equity go back to their proper jurisdiction as civil courts. Let them not try to prevent crimes as crimes, where there is no property right in jeopardy; and let them in such cases freely grant injunctions only against acts which are not in themselves crimes; for when you have a crime, the civil offense is merged in it — the private wrong in the wrong to the public. The public wrong deserves a punishment which shall be permanently established and avowedly inflicted

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upon the offender as a criminal, and which shall be regulated by law and by the constitutional protections of a fair trial, before a jury, with witnesses and counsel. If it be argued that under an Altgeld the state criminal laws are insufficient, I admit that some states may need the lesson of a too lax criminal law. But the offenses under consideration are all federal offenses also. Let the United States troops be called in, not as a kind of assistant-marshal to an equity court, but to enforce the criminal law of the United States; to maintain order; to put down insurrection; and to guarantee, as the constitution demands, a republican form of government. Then the people will understand why the troops are there; and I believe the murmuring at their presence will cease.

Second. Let no person be punished in an equity action for contempt not committed in presence of the court, unless he is a party to the suit, or the servant or agent of a party, or has been personally served with a copy of the injunction order. It is perfectly easy to observe this rule, and I have said enough as to the danger when one judge sitting in equity attempts to control the actions of the world. Furthermore, since the very essence of the injunction is a definite prohibition, upon which a contempt may be shown as precise as an indictment, let us beware of the mandatory injunction giving indefinite orders to an army of men to do their duties.

Third. In any case where both a crime and an infringement of a property right are involved, the injunction will have to issue as to the property right, and be valid as a concurrent remedy with the criminal process; but let not *ex post facto* punishment be inflicted where there is a criminal penalty. For the object of process for contempt is only to meet an emergency, or to prevent a threatened disobedience. After the emergency and the possibility of disobedience have gone by, and the need of equity preventive jurisdiction has ended, let not an equity judge sentence as a criminal judge, for what is now simply a crime or a misdemeanor, without any trial. It is probable that our courts may settle back to this position, logical, simple, and justified by all equity authority up to five

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years ago; if not, a simple statute so defining their powers in injunction and contempt would be defensible; if a change is not effected in the one way or the other, there is danger that all equity jurisdiction, so valuable and so effective, which was established in many states only after a fifty years' struggle with the suspicion of the people and the jealousy of the common-law courts, may be repealed at a blow. It would be easy to provide that the finding of a judge in the contempt process should take effect as the presentment of a grand jury. Then Debs, or any other person complained of, could be at once handed over to an ordinary officer of the criminal courts, to be locked up or bailed until the time of trial, then to be tried by a jury of twelve men, and, if found guilty, to be sentenced, as a criminal, according to the law of the land and the constitution of the United States.

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STATIC AND DYNAMIC SOCIOLOGY.

I.

THE terminology of social science is at the present time in process of formation. It seems to be pretty generally agreed that Comte's word "sociology" is the best name for the science as a whole; but how the science shall be subdivided and what names shall be given to the subdivisions, are questions by no means settled. The real cause of this unsettled terminology is a lack not only of uniformity but of clearness in the views of different writers upon, and teachers of, the subject.

As one of a considerable number who think that the primary subdivision should be into static and dynamic, I shall attempt in this article to indicate the boundaries which it seems to me proper to set to these two departments. The division, of course, is not my own. It was first employed by Comte, who, notwithstanding his adoption of the name sociology, preferred to consider the phenomena of society as constituting a science of "social physics," and as capable, like those of the inorganic world, of being contemplated in both their static and their dynamic aspects. Mathematician as he was, he sought to carry the subdivision employed in mechanics into this most complex field of phenomena.

> Social dynamics [he says] studies the laws of succession, while social statics seeks those of coexistence; so that the general application of the first is properly to furnish to practical politics the true theory of progress, at the same time that the second naturally forms that of order.[1]

Mr. Herbert Spencer in his *Social Statics*, even as "abridged and revised" in 1892, nowhere attempts to explain the scope of the term he adopts as the title of his work, but admits that his original use of it was due, though indirectly and uncon-

[1] Philosophie Positive, 3d edition (Paris, 1869), vol. iv, pp. 263–264.

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sciously, to Comte. The work itself has so little to do with systematic sociology that we may accept the statement of one of its reviewers that the name seems to have been chosen "only as a means of indicating vaguely that it proposed to treat of social concerns in a scientific manner."[1] In criticising Comte Mr. Spencer has, however, said:

> Respecting M. Comte's application of the words *statics* and *dynamics* to social phenomena, now that I know what it is, I will only say that while I perfectly understand how, by a defensible extension of their mathematical meanings, the one may be used to indicate social *functions in balance*, and the other social *functions out of balance*, I am quite at a loss to understand how the phenomena of *structure* can be included in the one more than in the other.[2]

Passing over other attempts to define static sociology, I will confine myself to noting some recent definitions by American writers. Small and Vincent, in their *Introduction to the Study of Society* (page 66), say:

> The conception of statical sociology, to which the method of this book leads, corresponds in form, but not in content, with that of Herbert Spencer; it is the doctrine of the "equilibrium of a perfect society." This use of terms is in sharp contrast with that of Comte.

They define sociology as "the science of social ideals," and add:

> It is a qualitative and approximate account of the society which ought to be. By universal consent inquiry about what ought to be has been made the task of ethics. Statical sociology is, therefore, an ethical discipline. Social statics is, in brief, social ethics.

I will not say that I do not agree with this, but simply that I do not understand it.

Mr. Ira W. Howerth has recently[3] asked the principal students of social science in this country whether they approve of the

[1] *North British Review*, XV, 321 (August, 1851).

[2] Reasons for dissenting from the Philosophy of M. Comte. Appendix to The Classification of the Sciences (London and New York, 1864), p. 44. Also, Essays Scientific, Political and Speculative (New York, 1891), II, 135.

[3] Annals of the American Academy of Political and Social Science, V, 119 (September, 1894).

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subdivision of sociology into descriptive, static and dynamic. Of twenty-three answers received he says that nine are in favor of such a subdivision and fourteen are "opposed," but he does not inform us how these fourteen would subdivide it, if at all. Dr. Small, in his answer, substantially repeats the definition of static sociology above quoted, by calling it "the ideal of society in equilibrium, essential social structure and needs being the criterion." Dr. Ross says that static sociology "seeks to distinguish social types and the forms of institutions, in order to determine the laws of their coexistence and sequence." Professor Dewey says: "Statical, I consider the principles of social organization as such; the structural relations, the morphology."

Most of the authors above quoted also give definitions of dynamic sociology, but I pass these over for the present and speak first of the static side. This I wish to emphasize the more, as it is the side to which I have given little attention in my works. Since nearly all the scientific work thus far done in sociology has been in that field, I have hitherto purposely omitted to treat it; but I have never been at a loss to separate it clearly from the other. Now that the dynamic side is beginning to receive attention, it seems to me that most writers confuse it with the static and that there is great need of making clear the fundamental distinction between the two. While the definitions quoted above doubtless contain much that is true, and do, in a manner, mark off the two departments of scientific sociology (descriptive sociology is only the work of the collector), still they do not seem to me at all satisfactory, and they fail to reach the fundamental principles upon which the distinction rests. Without discussion of the definitions, therefore, I will now proceed to set forth briefly what I conceive those principles to be.

II.

The deeper truths of a complex science are, as a rule, much more clearly apparent in the simpler science upon which it rests. The leading criterion of a true science is the recogni-

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tion of the natural forces in obedience to which its phenomena appear. So long as botany and zoölogy consisted entirely in collecting and labeling specimens, they were not entitled to be called sciences; but as soon as form and structure began to be studied, which was necessary even for the rudest classification, law was recognized; and law is only the expression of the uniform inherent forces.

Now, in the entire animal kingdom, which of course includes the human species, the most fundamental antithesis in phenomena is between those of *feeling* on the one hand and of *function* on the other. Feeling is the one distinguishing characteristic of the animal world. In the celebrated phrase of Linnæus: "Minerals grow; plants grow and live; animals grow, live and feel."[1] For the first time we here encounter a psychic attribute, and throughout the entire range of animal, human and social operations, we must deal with this, which is the only true psychic force. Our distinction between the static and the dynamic begins right here, and it never leaves this primordial base. Feeling is the force of the sentient world; it is equally that of the social world. It is the spring of all activity and that without which no proper action can take place; for motion or movement in inanimate bodies is called action only in a metaphorical sense, as borrowed from feeling beings. Everything connected with feeling is therefore primarily dynamic. The equilibrating principle resides in organization. Unorganized force is ineffectual. Organization has for its end the creation of forms which concentrate and inhibit forces and ultimately expend them with economy in intensifying effects. These forms are the various organisms that people the earth. Human beings are the most highly organized of these, and by dint of his intelligence man has become the most numerous of all the developed races. Biotic organization culminates with man, but social organization goes on without change in the principle, and not only creates a great variety of social and political bodies by the orderly grouping of individual

[1] Lapides crescunt; vegetabilia crescunt et vivunt; animalia crescunt, vivunt et sentiunt. Philosophia Botanica (Stockholm, 1751), p. 1.

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men, but also establishes a multitude of effective institutions as the social machinery through which economic results are accomplished.

Processes which relate to the production of organisms, social organizations and human institutions are broadly grouped under the head of function. The object of organization being to store energy, — *i.e.*, to bring the psychic forces into a state of equilibrium, so that they can be economically drawn upon and directed into efficient channels, leaving a reserve for future use, — it is clear that, from the very definition, function is essentially static. And here again, as in the case of feeling, there is no stage in the entire range of vital and social organization at which this ceases to be true.

The organized product adapted to economize force consists exclusively of appropriate structures; therefore the study of structures, whether physical or social, is static. Structures exercise functions, and it is these functions that sustain, continue and mitigate life. All this is also purely static, and in general it may be said that all considerations of structure and function are static. The object of function is essentially the preservation of forms. It has nothing to do with their modification. That a particular organism shall preserve its existence as long as its inherent powers of duration permit, is the first law of functional life; and this is secured by the process called nutrition. That before the limit of duration is reached it shall provide for the renewal of its form in other individuals of its kind, is the second law; and this is secured by the process called reproduction. But involved in these processes, and equally belonging to the domain of static phenomena, are the respective facts of growth and multiplication. That an organism, through abundant nutrition, shall increase in size, or that a species, through fecundity, shall increase in numbers, does not alter the general law according to which these processes go on. This is a common stumbling-block to writers on these subjects, who are apt to confound mere growth or simple multiplication with properly dynamic phenomena. This has been done in a conspicuous manner by Mr. Benjamin Kidd in his

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Social Evolution, in which all along the growth of population is confounded with "progress." The same kind of mistake is made by Messrs. Small and Vincent in their *Introduction to the Study of Society*, where, at the beginning of Book IV (page 237), after clearly and accurately premising that "social activities have their source in the desires of individuals," they wrongly proceed (§ 114) to apply the term "social growth" to "progress" and "evolution." This is simply to confound static and dynamic sociology. Merely *quantitative* change is static. In dynamic phenomena the change is *qualitative*.

It is easy to see that in biology the greater part of all that has been done, beyond the necessary accumulation of data for study, has been in its static department. All studies of structure (anatomy, histology, morphology) and function (physiology) must be so classed, and some may be at a loss to see what remains. In sociology, though much less has been done, the same is practically true. Sociologists rarely overstep the border of social statics. When they take up the laws of preservation or sustentation, they at once find themselves confronted by the "social organism"; and thereupon they devote themselves either to analyzing the structures of the several organized bodies of society — states, churches, business associations, *etc.* — or to investigating the social operations that produce and distribute the nutritive pabulum of society; that is, they confine themselves to the anatomy and the physiology of society. If they enter the field of the reproductive forces, they encounter on the threshold the institution of marriage and that primary social structure, the family, and rarely go beyond these. All ethnological studies, as of the customs, mythology, religion and arts of primitive peoples, their government, their proprietary laws, and their tribal relations, also belong to this class. Here again it might be supposed that the list was exhausted. And yet we frequently find in the midst of this static work the treatment of topics, such as political revolutions, religious reforms, and the reversal of economic opinion, which clearly belong to social dynamics.

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III.

If, then, the static phenomena of sentient life are so clearly marked off and easily recognized, what are the criteria of its dynamic phenomena? Going back to our primary antithesis, we see that they are those that grow directly out of the fundamental fact called feeling. Compelled as we are by the defectiveness of language, due in turn to the defectiveness of human knowledge when language was formed, to express genetic truths in teleological phrase, we may say, without danger of being misunderstood by the well-informed, that the end of nature and that of the organism are not the same, but are entirely distinct. Nature aims only at the preservation of the organism and the continuation of the race. The organism, on the contrary, knows nothing of these ends and has no concern for them. The opposite view which prevails is an illusion. The sole end of the organism is the satisfaction of its desires, which is that which yields pleasure. More accurately speaking, every organism is engaged during its entire life in the business of pursuing pleasure and avoiding pain. If we call the pleasures *plus* and the pains *minus*, the end which the organism has singly in view is to attain the maximum algebraic sum of these conscious states. This is what is meant by feeling as an end.

Now, the conditions under which life has been developed have been such, and could only have been such, that the pursuit on the part of the organism of its end is that which secures the ends of nature. Feeling is adapted to function. Only such desires could be developed under the laws of survival as tended to preserve and perpetuate the creatures possessing them. This to the biologist is a full explanation of the existing state of things, and no other "preëstablished harmony" is required. If, therefore, the creature does but seek its own ends, those of nature will take care of themselves.

The mere action necessary to the satisfaction of desire is the primary dynamic element, but it would be little effective if satisfaction followed immediately. In fact, this rarely or never

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happens, and in the great majority of cases there intervenes the state called *effort*. The organism is perpetually striving to attain its ends. The efforts put forth are often intense and prolonged. The activity manifested is great and the energy expended is correspondingly great. This expenditure of energy has its results quite independent of those of function. Even if the end be not attained, these results are secured. In fact, the more remote and difficult the end, the greater the direct effort applied to removing the difficulties; and the maximum effect is reached in those enlightened human activities in which the attainment of the end depends upon careful calculations and patient elaboration of the means.

In its broadest sense the word dynamic may be taken to describe an advantage, benefit or good, independent of both the individual (feeling) and the race (function) — something that is useful to the world at large or to the general scheme of development or evolution. That is to say, it does not benefit that individual or that race, but institutes processes that are to benefit many or all individuals and races. The direct effects of activities, the results of efforts to secure the ends which the individual has in view, are dynamic in this sense. So far as either nature or the organism is concerned they are incidental and unintended. They have significance and value only to the world at large; in short, they form the elements, and the sole elements, of progress.

But here a precaution is necessary, and a more exact term than progress is needed. The antithesis between the static and the dynamic requires to be still more incisively drawn than has yet been done. We have seen that both growth and multiplication belong to the department of statics. What is the corresponding fact in the department of dynamics? "Progress" is not always sufficiently comprehensive, and "evolution" is open to the same objection. In biology this fact is expressed with considerable accuracy by the word *transmutation*. So long as the type remains the same, the phenomena, whatever they may be, are static; there is permanence and stability. The law that works for this permanence of type is called

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heredity. The counter-law that antagonizes heredity and works for instability is called *variation*. Under the harmonious operation of these two antithetical laws *development* has taken place. Variation is primarily due to intense, prolonged and often unsuccessful efforts on the part of organisms to secure their ends. The necessity for such efforts is due to the imperfect adaptation of the organism to its environment. The efforts[1] bring about a more perfect adaptation through modifications in the type, and this usually, but not always, secures an advance in the type. This is development. If, however, a lower type is better adapted, the result is degeneracy. In either case it is transmutation. In either case it is a dynamic phenomenon.

It would be easy to expand this part of the subject and show that all the transformations that have taken place in the animal world have been the result of such efforts on the part of the creature for the attainment of its ends.[2] Some idea of the vivifying influence that springs from the study of any science on its dynamic side may be gained by a comparison of what biology has become since Darwin, who may be said to have founded dynamic biology, with what it was under Cuvier, when the dynamic principles of Lamarck were treated with disdain. What Darwin taught is not so much the origin of species as the transmutation of species. He diverted attention from life structures to life movements. Just as geologists, before Hutton and Lyell had established the uniformitarian law of dynamic geology, regarded the earth's crust as stationary and accounted for changes that they perceived had taken place by the doctrine of cataclysms, so pre-Darwinian biologists, with a few notable exceptions, regarded species as fixed, and accounted for variety and

[1] The word "efforts" is not used here in a strictly Lamarckian sense, but is intended to include all modifications due to natural selection and the mingling of different ancestral germ plasmata that tend to variation. All these conditions of change are due to the universal *nisus* of life, pressing everywhere for more perfect adaptation, which may properly be characterized as effort. Darwin himself, who cannot be suspected of not clearly seeing the indirect influences, characterized it as the "struggle of the favored races," or the "struggle for existence," but it would be more accurately described as a struggle for the satisfaction of desire.

[2] I have done this to some degree in Psychic Factors of Civilization, chap. xiv, to which I venture to refer the reader.

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multiplicity of organic forms by the doctrine of special creation in each case. The revolution in geology was not more complete than that in biology. The static laws of both still remain, but it needed the dynamic laws also to make the two sciences complete. Both the static law of heredity and the dynamic law of variation are summed up in the happy phrase of Darwin, "descent with modification."

Is anything analogous to this in store for sociology? Surely this youngest of the sciences need not complain if it is compelled to wait yet a long time in its static stage. But the world moves, and the history of other sciences proves that this too must possess a dynamic department. The search for the key to it has already begun, and if rewarded with success, will doubtless reveal the secret of social evolution. That the dynamic principle must reside in the affective department of man's psychic nature, admits of no doubt; and that it should be essentially different from that of all other life, is not to be expected. A slight modification of the terms and the substitution of synonyms more applicable to the human sphere of action are all that is required. If the lower organisms seek pleasure — so does man, but we may call it happiness. If desire is their sole motive power — so it is his, but we may call it want. Efforts and satisfactions are the same in both spheres, only, as already remarked, the former are much more prolonged in a being that can foresee future results, and the dynamic effects are correspondingly increased. These effects are transmutations and adaptations in the one case as in the other, but here we encounter an essential difference. In the one case the organism is transformed to adapt it to the environment; in the other the environment is transformed to adapt it to the organism. In so far as we deal with physical modifications in man's bodily structures, we are treating of dynamic biology. When we deal with modifications in his surroundings and in his relations to the universe, we are treating of dynamic sociology.

All social structures may be embraced under the general term *institutions*. Social functions are the operations con-

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ducted by institutions. Institutions, like bodily structures, are exceedingly numerous and multiform, and social functions are correspondingly manifold and varied. Looked at for any given point of time, they seem stationary ; but viewed from the standpoint of history, they give evidence of continuous though slow and uneven change. Compared with the changes going on in organic structures the modifications of social structures are, it is true, very rapid ; but to those who see and are trying to remedy defects the persistence of social structures seems to be needlessly great. Dynamic sociology is the science which considers this change in social structures and functions. There is a principle in society called *conservatism* — corresponding to that of heredity in biology — which tends to preserve social structures. Their very existence, as in organic structures, is a proof of their usefulness, and their destruction, or even their modification, is strenuously resisted. But no structure is ever perfectly adapted, and all must ultimately reach a point at which the adaptation begins to grow less and less. The time at length arrives when change is essential to continued existence. In societies, no less than in races of animals, those which cannot change must perish. The persistence of social structures is that which we understand by social order. The change of social structures in the direction of greater adaptation is social progress, and this must be true even though it require a lower type to secure the adaptation. Such cases, however, are rare, and progress in society, like development in the organic world, is in the main an advance in the direction of perfecting the types of structure. As a rule these advantageous modifications take place gradually and imperceptibly, though seldom at a uniform rate; but the rhythm is often more marked, and long periods of stagnation are followed by what are called reforms or even revolutions.

In a general way all this has been recognized, but very few attempts have been made to arrive at the initial principle according to which these qualitative changes in the types of social structure take place. Bastiat struck the keynote when he said that the whole science of man could be summed up in

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the three words: wants, efforts, satisfactions.[1] But really the last of these factors, though the end of the other two, would be fatal to movement if it followed immediately upon the first. Want is the motive power to all social phenomena — the real social force, but all change is the result of effort, and would attend it even if satisfaction were not attained. Comte utters the purely dynamic truth even more correctly when he says that "mental activity [which he explains in the next sentence not to mean the higher speculative activities of the mind] is only persistently maintained by the continued pressure of the various human wants, the immediate satisfaction of which is happily not possible without persistent efforts."[2] Herbert Spencer has recognized the same truth,[3] and in fact it forms the basis of what is true in individualism, in defending which he and other writers have made an entirely unwarranted application of it. Professor Clark sees it in its proper light,[4] and several of the replies to Mr. Howerth's question embody the germ of it. For example, Professor Dewey says: "Dynamic is the theory of social movement as such; the functioning of the organs so far as they involve *modifications of structure*." Dr. Ross also says: "Dynamic studies the forces underlying social phenomena and causing *movement* and change." Still more recently[5] he has slightly elaborated his view and furnished some examples, showing a clear grasp of what may be called economic uniformitarianism.

The principle according to which efforts become so important is that their influence is not confined to the individual, but extends to all individuals and to society at large. Just as in

[1] "Besoins, efforts, satisfactions, voilà le fond général de toutes les sciences qui ont l'homme pour objet." *Journal des Économistes* for September, 1848, vol. xxi, p. 110. The article (pp. 105–120) is entitled: "Harmonies Économiques," which is also the title of the sixth volume of his complete works (Paris, 1854). The second chapter of this volume (pp. 40–54) is entitled: "Besoins, Efforts, Satisfactions," and consists of the article considerably expanded, but does not contain the sentence quoted. The article and chapter as a whole are somewhat disappointing when read from the present standpoint.

[2] Philosophie Positive, vol. iv, p. 224.

[3] See his Principles of Biology (New York, 1873), vol. ii, p. 499 (§ 373).

[4] Philosophy of Wealth, p. 56.

[5] *University Extension* for November, 1894, vol. iv, p. 138.

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biology it is not the particular organism or the particular race, but the organic world in general that is benefited by the struggle for existence, so in the social sphere it is neither the individual nor his direct family or line, but society at large that is the recipient of the advantageous consequences of dynamic activities. In breaking a new way to the satisfaction of a particular individual's wants, a means is secured of satisfying like wants of all other individuals, and they appropriate it and reap the benefits. Just as the pioneer who cuts a road through a forest and goes on, never to use it again, is soon followed by others until it becomes a great highway, so the results accomplished by the efforts of the individual, though only useful to him for the time being, remain as the initial steps in the material civilization of the world. A dynamic action is one that affects not merely the primary agent at the particular time, but all other agents for all time. Such actions are sometimes called "fructifying causes." They are pregnant with future consequences. Static actions leave matters in the same state after as before their performance. Dynamic actions create a new state in which small efforts produce relatively great results. The routine work of the housewife in preparing meals, washing dishes, making beds and cleaning house, is purely static, and must be done over and over again each day in a perpetual round with no ulterior effects; but one who organizes new and improved methods of housekeeping or invents labor-saving machines and utensils is engaged in dynamic work, which economizes social energy and husbands the strength of thousands forever afterward. Charity work is chiefly static and supplies only temporary and ever-recurring wants. The highest philanthropy consists in such deeds as tend to diminish the number of indigent persons and thus to render charity unnecessary.

This principle applies with equal force to all three of the primary classes of social wants — the life-sustaining, the life-continuing and the life-mitigating forces. The first of these classes constitutes *par excellence* the field of political economy, or social economics, since it relates directly to the means of

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subsistence. In this department the dynamic point of view is that of *consumption*. The older economists almost completely ignored this factor, recognizing it, if at all, only to deny its legitimacy as a part of political economy. Mr. John Stuart Mill probably reflected the consensus of opinion on this question when he said: "Political economy . . . has nothing to do with the consumption of wealth, further than as the consideration of it is inseparable from that of production, or from that of distribution."[1] But some of the economic writers of our day have begun to understand the true meaning of consumption, and are working along that line. As early as 1871 Professor W. Stanley Jevons, after intimating that "dynamical branches of the science of economy may remain to be developed,"[2] proceeds to say:

> Political economy must be founded upon a full and accurate investigation of the conditions of utility; and to understand this element we must necessarily examine the character of the wants and desires of man. We first of all need a theory of the consumption of wealth.[3]

Gen. Francis A. Walker approached the problem in the following language:

> The chief interest of political economy to the ordinary reader, its chief value to the student of history, must be in the explanation it affords of the advance or the decline of the productive power of nations and communities; and it is only in the consumption of wealth that we find the reasons for the rise of some and the fall of others, from age to age.[4]

It is seen by such writers that from the standpoint of the individual the sole object of production and distribution is the satisfaction yielded in consumption, and that although the individual cares nothing for benefits that accrue to society from his efforts to attain that satisfaction, still these efforts do furnish such benefits, advantageously modifying human institutions and thus causing social progress.

[1] Essays on some Unsettled Questions of Political Economy, 1st edition (London, 1844), p. 132, footnote.

[2] The Theory of Political Economy, Preface, pp. viii–ix.

[3] *Ibid.*, p. 46.

[4] Political Economy (New York, 1883), pp. 298–9 (§ 329).

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The second primary group of social wants, the life-continuing forces, are still unrecognized in their dynamic aspect. And yet fully one-half of the energy of society is expended in this direction. It is not conceived that anything scientific can be coupled with such a passion as love. This field is turned over exclusively to the poets and romance writers. These, however, probably produce more literature than all other writers combined, and their books are greedily devoured by millions who do not know what science means. A well-conceived romance constitutes one of the best illustrations of the distinction between social dynamics and social statics. It represents the former exclusively. It paints the passion and records the struggle, but satisfaction once attained, it ends. In scientific phrase, it deals with a social want and the effort to supply it; but when these culminate in the social institution, marriage, and crystallize into the social structure, the family, the romance is ended, and the scientific treatise may begin. Yet it is through these prolonged and eventful struggles — the wooings and waitings, the rivalries and jealousies, the chivalry and constancy, the obstacles and disappointments — that character is formed, heroism displayed, labor performed, wars waged, empires founded, fame achieved, and the face of nature transformed.

The third primary class of social wants, the life-mitigating forces, are chiefly derived from the other two, and represent the surplus energy that any given social state may afford after satisfying these. They are the aesthetic, moral and intellectual cravings of civilized men. The efforts put forth for the realization of ideals of beauty, righteousness and truth are the noblest that life elicits, and from them flow art, beneficence and intelligence. The study of these highest aspirations of the soul and the dynamic transformations that attend them is clearly a thing apart from the study of the institutions to which they give rise, considered as finished products.

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IV.

To sum up, then, the test of a static phenomenon is that it shall relate to function, *i.e.*, shall have directly or indirectly to do with some one of nature's ends in sustaining, continuing or mitigating life. This includes all structures and the metabolic processes necessary to maintain, renew, increase and multiply them, but not the conditions which change or modify them. Social structures are institutions, in the broadest sense of that term, and static sociology embraces the study not only of the nature of institutions, but of all that they accomplish in their normal capacity — their anatomy and physiology. However well it may be known that they are undergoing change, this must be left out of view, and they must be studied as so many facts, *i.e.*, contemplated as fixed, just as the systematic botanist or zoölogist contemplates the species of plants or animals.

Sociology as a science recognizes society as a theater of forces, and this as well in its static as in its dynamic aspect. The three primary groups of social forces are the life-sustaining, the life-continuing and the life-mitigating wants. These result in organization, and the purpose of organization is the production of mechanisms for economizing energy. Such mechanisms accomplish their object by securing an equilibrium of forces, and the study of social forces in equilibrium is static sociology.

The organs adapted to sustaining social life are chiefly those institutions within the scope of political economy that may be studied from the standpoint of their nature or of their action — anatomically or physiologically — both of which studies belong to static sociology.

The organs adapted to continuing social life are chiefly marriage institutions and the family, but they may be studied comparatively and made to include all forms of marriage and the whole subject of kinship. So long as these various institutions, no matter how diverse in different nations and ages, are considered as they actually are, or as they were at any given time,

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and not as in process of transformation, the limits of social statics are not transgressed.

The organs adapted to mitigating social life include all the institutions that cluster round art, religion, ethics, literature and science. Each of these vast fields is capable of being studied in its statical aspects as a product of social organization.

In sharp contradistinction to all this, the test of a dynamic phenomenon is that it shall relate to feeling and shall have to do with the direct effects of action in the effort to satisfy want, *i.e.*, with the ends of the individual in some one of the three primary classes. The effects themselves are incidental and unintended so far as the ends of the agent or of nature are concerned, but they constitute the only element of change in the types of structure.

In society these changes serve to adapt man to his surroundings, to modify and reform human institutions, and in general to cause social progress. Dynamic as well as static sociology deals with the social forces, *i.e.*, with social wants; and in the one case as in the other these are divisible into such as respectively sustain, continue and mitigate life. The dynamic factor in each is effort. In the first the satisfaction comes in the act of appropriating, or, in economic phrase, of consuming. This stimulus leads to every form of economic movement, and is what makes the wealth of nations. In the second the stimulus not only prompts the greatest deeds, but, what is more important, its quiet universal working makes the homes of all lands. In the third we see the simultaneous development of art, religion, morals, education, science and industry. All these movements in harmonious coöperation work the changes that go on in social institutions, and constitute what is known as social progress.

It may be remarked, in conclusion, that there has been a perceptible tendency during most of the nineteenth century to break away from the objective or static standpoint in thought and to consider things in their subjective or dynamic aspects. This tendency has manifested itself in all the higher departments of science. The great biological revolution has already

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been referred to. In psychology it took the form of a transfer of attention from thought to feeling, from intellect to sense. Kant led the way by recognizing the subjective aspect of mind (*Sinnlichkeit*) as worthy of scientific study, though he did not himself study it, but Schopenhauer, embodying it in the term *Will*, made it the "thing-in-itself," and revolutionized the philosophy of mind. Bain's study of the emotions and the will and Spencer's estho-physiology gave this side of the subject the sanction of science, and led the way to modern experimental psychology. In sociology Comte insisted upon the "affective" faculties as a factor in social physics, and in his later writings elaborated his *philosophie du cœur*, which as eminent and conservative a psychologist as Professor Wundt, notwithstanding the prevailing opinion, declares not to indicate a diseased mind.[1] All these influences, coupled with the universal study of the sub-human stage of life, where feeling is well-nigh supreme, worked a great change in the standpoint from which everything was to be viewed, amounting to little less than an *Umwerthung aller Werthe*. The economists who are founding a dynamic economics, based on consumption as the prime factor, may imagine that they are independent of these influences; but in such a supposition they are greatly mistaken. They may not have gone back to learn the sources of their thoughts, but the air is full of the new philosophy, and they have simply drawn from the common reservoir. They are as much the creatures of the modern *Zeitgeist* as was the author of *Dynamic Sociology* in 1883, and the entire movement is one of the clearest examples of the dynamics of mind.

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[1] See Heinrich Waentig, Auguste Comte und seine Bedeutung für die Entwickelung der Socialwissenschaft (Leipzig, 1894), p. 92.

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THE INCOME TAX IN THE AMERICAN COLONIES AND STATES.

THE recent discussion as to the constitutionality of the income tax has aroused some interest in the query whether the taxation of incomes is, after all, such a novel thing in American experience. While we have all heard much about the federal income tax of the Civil War period, we look in vain for any account of earlier instances. It may be well, then, to put on record the facts of income taxation in the American colonies, to compare the colonial taxes with analogous taxes in the American commonwealths of the present century, and to ascertain, if possible, how far these imposts really deserve the name of income taxes.[1]

I. *The Beginnings.*

The first general tax law in the American colonies, with the exception of the early poll-tax in Virginia,[2] was the law of 1634 in Massachusetts Bay.[3] This provided for the assessment of each man "according to his estate and with consideration of all other his abilityes whatsoever." It is probable that the measure of this ability was to be found in property; for, although the law itself does not further explain the term, the matter is elucidated in a provision of the next year, that "all men shall

[1] This essay was originally written, with the exception of a few paragraphs, about two years ago, and was intended to form a chapter in a general work on the income tax. At the request of Mr. Clarence A. Seward, one of the counsel in the recent income-tax cases before the United States Supreme Court, a portion of this essay was submitted to him in manuscript form, and was utilized with my consent in the preparation of the monograph submitted by him in the original hearing as a supplementary brief. The majority of the quotations in that monograph (pp. 22–28) are taken from the manuscript essay.

[2] For the early Virginian legislation, see Ripley, Financial History of Virginia, 17–24 (Columbia College Studies in History, Economics and Public Law, vol. iv, no. 1).

[3] Colonial Records of Massachusetts Bay (Shurtleff's ed., 1853), I, 120.

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be rated for their whole abilitie, wheresoever it lies."[1] This seems to imply only visible property; for such property alone is susceptible of a *situs*.

It was not until several years later that "ability" was defined to include something more than mere property. This, however, occurred not in Massachusetts Bay, but in the colony of New Plymouth. In 1643 assessors were appointed to rate all the inhabitants of that colony "according to their estates or faculties, that is, according to goods lands improoued faculties and psonall abillities."[2] This law is noteworthy for a double reason. It is the first to use the term faculty, and it distinguishes faculty and personal ability from visible property. But although it provides for a faculty tax, it does not tell us exactly how to measure this faculty. This was reserved for the more comprehensive law enacted three years later by the Court of Assistants of the Massachusetts Bay Company. The court order of 1646 provides not only for the assessment of personal and real estates, but distinctly mentions "laborers, artificers and handicraftsmen" as subject to taxation, and then goes on to say:

> And for all such persons as by advantage of their arts and trades are more enabled to help bear the public charges than the common laborers and workmen, as butchers, bakers, brewers, victuallers, smiths, carpenters, taylors, shoemakers, joyners, barbers, millers and masons, with all other manual persons and artists, such are to be rated for returns and gains, proportionable unto other men for the produce of their estates.[3]

Here for the first time we have the definition of faculty or ability. Just as the faculty of the property owner is seen in the produce of his estate, so that of "artists" and "tradesmen" is to be found in their "returns and gains." Of course, since the property value of an estate is approximately equal to the capitalized value of the annual produce, the faculty of the

[1] Colonial Records of Massachusetts Bay, I, 166.

[2] Records of the Colony of New Plymouth: Laws 1623–1682 (Pulsifer's ed.), XI, 42.

[3] Colonial Records of Massachusetts Bay, II, 173. *Cf.* II, 213, and III, 88.

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property owner can be measured by the value of the property, that is, by the value of his "estate"; but when there is no property, the assessors are compelled to fall back on the "returns and gains."

The principle thus laid down in the records of Massachusetts Bay was soon adopted by other colonies. The colony of New Haven, for instance, at first levied a land tax. But as early as 1640 personal property was assessed, by the provision that a new rate should be "estreeted, halfe upon estates, halfe upon lands."[1] In 1645 it was seen that even this was not adequate, and a proposal was made to tax others besides property owners; but no decision was reached at that time.[2] As the dissatisfaction grew, a committee was appointed in 1648 to inquire into the feasibility of the Massachusetts system of taxing all property in general, and also of levying a tax on the profits of those who possessed no property.[3] The committee reported that they were in doubt as to the advisability of taxing houses and personal property, but that "for tradesmen they thinke something should be done that may be equall in waye of rateing them for their trades." As a result the law of 1649 was enacted, which introduced the taxation of profits of laborers, tradespeople and others.[4]

[1] Records of the Colony and Plantation of New Haven, I, 40.

[2] The court considered "how heavy the publique chardges grew, that most of them have bin expended for the publique safty and about things of common public vse, wherein all that live in the plantation have a like benefit in their proportions, and yet many live in the plantation and have manny priveledges in it have hitherto borne noe part of these publicque chardges, wherevppon it was debated whether or noe in equety such should not be rated some way or other for time to come, so as those that have borne the whole burden hitherto may be eased; but because it was not ripe for an issue, the court referred to . . . a committee." Records of the Colony and Plantation of New Haven, I, 181.

[3] Lieut. Seely propounded that the court would "consider of some other waye of rateing men than is settled by lands for divers men wch had good estates at first and land answerable, whose estates are sunke and they not able to paye as they did, and divers Psons whoe had land for their heads, whose estates are smalle, yett paye great rates, and others whose estates are increased, haveing but little land, paye but a small matter to publique charges," *etc., etc.* Records of the Colony and Plantation of New Haven, I, 448.

[4] The reason given was: "Seeing that labourers and handycrafe trades & seamen are of divers sorts & conditions, some live more comfortably, some less, some follow ther trades more and some less, ther time being taken vp more aboute

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In Connecticut the early laws were patterned on the Massachusetts Bay legislation. It was provided in 1650 that "every inhabitant who doth not voluntarily contribute proportionably to his abillity to all common charges shall be compelled thereunto by assessments and distress"; and it was further provided that the lands and estates should be rated "where the lands & estates shall lye," but "theire persons where they dwell."[1] Then follow detailed instructions how to assess various kinds of property. The final clauses in these instructions provide for the faculty tax on all "manuall persons and artists," *etc.*, following word for word the Massachusetts Bay law of 1646, as quoted above. These provisions are frequently repeated in the laws of the seventeenth century.

In Plymouth Colony the practice inaugurated by the law of 1643 continued, although we find only two more instances where it is expressly mentioned, namely, in 1665, when "visible estates and faculties" are spoken of,[2] and in 1689, when a court order fixed the valuation for different kinds of visible estate, but left the valuation of "faculties and personall abilities" to be determined "at will and doome."[3]

In Rhode Island the faculty tax was introduced a little later. In 1673 the assembly laid down the rule that taxes ought to be assessed according to "equety in estate and strength," *i.e.*, not only according to the property, but also in proportion to what was elsewhere called the "faculty," or "profits and gains."[4]

husbandry wch payes another way, that therefor a due consideration be had, and every man justly rated as neere as the comittee can judge, and that other men whoe trade in way of merchandizing bee duely rated according to their trades and stockes they improve, as neere as they can judge." *Ibid.*, I, 494.

[1] Colonial Records of Connecticut, I, 548.

[2] Records of the Colony of New Plymouth (Pulsifer's ed.), XI, 211; Shurtleff's ed., IV, 102.

[3] Records of the Colony of New Plymouth, VI, 221.

[4] "This assembly, taking into consideration the great dissatisfaction and irregularity that hath been by makeinge rates or raisinge a common stock for public charges in this Collony in general or for any perticular towne, and the great faileableness to accomplish it and great delaies in performance, what was done, and the necessity there is for publick charge to be borne, and the justice it should be done according to equety in estate and strength," *etc.*, *etc.* Colonial Records of Rhode Island, II, 510.

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In Rhode Island we find moreover the curious survival of the mediæval practice that every man should assess his neighbor as well as himself.[1] Later on "three able and honest men" were chosen in each town to "take the view of each of their inhabitants," and as to "the merchants and tradesmen to make this part of the rate according to the yearly profit."[2]

Outside of New England this early taxation of profits by the side of the general property tax is found also in New Jersey, where it was provided by the law of 1684 that not only property owners, but also

> all other persons within this province who are free men and are artificers or follow any trade or merchandizing, and also all innholders, ordinary keepers and other persons in places of profit within this province, shall be lyable to be assessed for the same according to the discretion of the assessors.[3]

This completes the list of examples of the faculty tax during the seventeenth century. Later on, as we shall see, the tax appeared in some of the Southern states. In New York it never secured a foothold. During the Dutch domination the tax system of this latter colony was composed almost entirely of excises and duties; when the English obtained control, the general property tax was introduced, but without any additional "faculty" tax as in the New England colonies.[4]

[1] The individual shall be required to "give in writeinge what proportion of estate and strength in pertickelar he guesseth tenn of his neighbours, nameinge them in pertickular, hath in estate and strength to his estate and strength." *Ibid.*, II, 512.

[2] *Ibid.*, III, 300 (1695).

[3] Laws of New Jersey, 1664–1701 (Leaming and Spicer), 494.

[4] Ely, in his Taxation in American States and Cities, 110, says that "the estimated incomes of certain classes were taxed." The context is not clear, but Professor Ely could only have meant that this was the case in New England, whose tax system is described in the New Netherland document to which allusion is made. Yet this passage was quoted in the brief submitted by Mr. Seward to the Supreme Court as showing that the system was to be found in New Netherland. This is a complete mistake. No such system ever existed in New Netherland. Mr. Seward's mistake is not wholly inexcusable, because it is not easy to ascertain from Dr. Ely's text whether he is referring to New England or to New Netherland.

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II. *The Eighteenth Century.*

During the eighteenth century the custom of assessing profits continued and extended to other colonies. In Massachusetts more earnest and repeated efforts to explain and enforce the law were made than anywhere else. This will be our excuse for tracing the legislation in more detail.

Upon the union of the Plymouth and Massachusetts Bay colonies into the Province of Massachusetts, under the charter of 1692, a law was immediately enacted providing that all estates whatsoever, real and personal, should be taxed at "a quarter part of one year's value or income thereof." But this was not very clear. Nor was the doubt removed by another law of the same year, to the effect that "every handicraftsman" be valued "for his income."[1] In 1697, however, we find the old terms used as of general application. The assessors are now again cautioned to rate the taxpayers, "having due regard to persons' faculties and personal abilities." In 1698 the clause "not excluding faculties" is inserted. And in the following year the assessors are instructed to tax "incomes by any trade or faculty which any persons do or shall exercise."[2] A few years later fuller instructions are given. Thus in 1706, the assessors are admonished to rate

> income by any trade or faculty, which any person or persons (except as before excepted) do or shall exercise in gaining by money, or other estate not particularly otherwise assest, or commissions of profit in their improvement, according to their understanding and cunning, at one penny on the pound, and to abate or multiply the same, if need be, so as to make up the sum hereby set and ordered for such town or district to pay.[3]

The law of 1738 adds the words "business or employment," commanding the assessment of

> the income or profit which any person or persons (except as before excepted) do or shall receive from any trade, faculty, business or

[1] Acts and Resolves of the Province of Massachusetts Bay, 1692 to 1780 (5 vols.), I, 29, 92. [2] *Ibid.*, I, 302, 413. [3] *Ibid.*, I, 592.

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employment whatsoever, and all profits which may or shall arise by money or other estate not particularly otherwise assessed, or commissions of profit in their improvement. . . .[1]

Except as to the rates, this form of law continued unchanged till 1777. The law enacted in this year gives a fuller interpretation of income than any hitherto. Taxpayers are assessed

on the amount of their income from any profession, faculty, handicraft, trade or employment; and also on the amount of all incomes and profits gained by trading by sea and on shore, and by means of advantages arising from the war and the necessities of the community.[2]

Again, the law of 1779 provides that,

in considering the incomes and profits last mentioned, the assessors are to have special regard to the way and manner in which the same have been made, as well as the quantum thereof, and to assess them at such rate, as they on their oaths shall judge to be just and reasonable; provided, they do not in any case assess such incomes and profits at more than five times [increased in the next year to "ten times"] the sum of the same amount in other kind of estate.[3]

In 1780, a constitution was adopted which commanded, among other things, that the public charges of government should be assessed "on polls and estates in the manner that has hitherto been practiced." The same methods, therefore, continued to the end of the century.

In none of the other colonies do we find so full or so frequent indications of the legislative intent as in Massachusetts. But occasional references are found to the practice of assessing income. And although it is probable that the custom was gradually dying out, the storm and stress of the Revolutionary period brought it again to the front in several places.

In Connecticut we have seen that the early laws followed almost word for word the Massachusetts legislation. Later acts provided that

[1] Acts and Resolves of the Province of Massachusetts Bay, 1692 to 1780 (5 vols.), II, 934. [2] *Ibid.*, V, 756. [3] *Ibid.*, V, 1110, 1163.

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all such persons who by their acts and trades are advantaged shall be rated in the list . . . proportionable to their gains and returns, — butchers, bakers . . . and all other artists and tradesmen and shopkeepers.[1]

As the assessors might find it difficult to rate them justly, the law sometimes gave more explicit directions as to fixing the income. Thus the following was enacted in 1725: "For the future every one of the allowed attorneys at the law shall be set in the annual list for their faculty, *i.e.*, those that be the least practitioners fifty pounds, and the others in proportion to their practice."[2] It may be doubted whether even this settled the matter definitely.

Later enactments prove, however, that instead of directly estimating the profits of the taxpayers liable to the tax, the assessors used different criteria to compute the amount. For instance, it had several times been provided that "all traders, tradesmen and artificers shall be rated in the list proportionable to their gains and returns." But as there seems to have been no uniformity in the methods employed, the following important act[3] was passed in 1771:

All traders or shopkeepers in this Colony shall be rated in the list after the rate of ten *per cent* on the prime cost of all goods, wares, and merchandizes which they purchase for sale by retail (except the produce and manufactures of this Colony). And all traders by wholesale, tradesmen, artificers, tavern-keepers, and others by law rateable on account of their faculty or business, shall be rated in the list to the amount of their annual gains, incomes or clear profits by means of their business, according to the best estimate that can be made thereof by the listers, who shall assess such traders, tradesmen, &c. by their best discretion, agreeable to the rules aforesaid. But when it appears that any persons have been unsuccessful or sustained considerable losses in their trade, in such cases the listers may make proper abatement for the same. And if any person shall be assessed by the listers for any of the matters aforesaid more than at the rates aforesaid, upon proof thereof, by oath or otherwise, to the satisfac-

[1] Acts and Laws of Connecticut (New London, 1715), 100.
[2] Colonial Records of Connecticut, 1717–1725, VI, 525.
[3] *Ibid.*, 1768–1772, XIII, p. 513.

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tion of the listers, or authority and selectmen, who have right by law to grant relief, such overcharge may be abated.

The faculty tax continued in Connecticut to the close of the century substantially unchanged, with the exception that ordinary artisans were subsequently exempted. Secretary Wolcott, in his famous report on direct taxes in 1796, described the tax system as embracing first, a tax on various kinds of property, real and personal, and second, "assessments proportioned to the estimated gains or profits arising from any and all lucrative professions, trades and occupations, excepting compensations to public officers, the profits of husbandry and common labor for hire." This second element was included in the annual lists of taxable property as "assessments on lawyers, shopkeepers, surgeons, physicians, merchants, *etc.*"[1]

In Rhode Island, where the faculty tax was originally levied as in the neighboring colonies, it seems to have fallen into disuse somewhat earlier. In 1744 the tax law still provides "that the assessors in all and every rate shall consider all persons who make profit by their faculties, and shall rate them accordingly."[2] This is the last direct mention of the faculty tax. In 1754 and 1755 the only taxes named are those on "estates and polls."[3] This expression might possibly still be considered to include faculties. But in the revision of 1766, which served as a basis of valuation during the remainder of the century, we search in vain for any mention of the faculty tax.[4] And when Wolcott drew up his report in 1796, he described the system of taxation simply as one "on polls and the collective mass of property."[5] It may safely be said, therefore, that the faculty tax had disappeared in Rhode Island by the middle of the century.

[1] American State Papers, Finance, I, 423, 454.

[2] Acts and Laws of His Majesty's Colony of Rhode Island and Providence Plantations (Newport, 1745), 295.

[3] Records of the Colony of Rhode Island, V, 309, 465. A curious protest against the arbitrariness in the assessment of the general taxes is to be found in 1766. *Ibid.*, VI, 518.

[4] Acts and Laws of the English Colonies of Rhode Island and Providence Plantations, 219.

[5] American State Papers, Finance, I, 422.

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In New Hampshire the faculty tax came late into use. The first detailed assessment law passed in the province, in 1719, instructed the selectmen to assess the residents "in just and equal proportion, each particular person according to his known ability and estate." Later on, in 1739, "an act for the more easy and speedy assessing" of taxes was passed, which authorized the selectmen to assess "the polls and estates of the inhabitants, each one according to his known ability."[1] In 1772 greater definiteness was attained by the provision that a person's "faculty" should be estimated at the discretion of the assessor, although not at a sum over twenty pounds.[2] Before the close of the century, however, the tax had disappeared. For the law of 1794, which fixed all the details of the state's system, while taxing tradesmen, storekeepers and others, assessed them merely on their stock in trade as a part of their personal property.[3]

In New York, as we know, there never was any faculty tax. But Vermont, when it split off from New York, followed the example of Connecticut in taxation as in much other legislation. The first law on the subject, that of 1778, is very explicit in its provisions, and repeats the Connecticut law in some places word for word.[4] The part of interest to us is as follows:

> Be it further enacted by the authority aforesaid, that all allowed attorneys at law in this commonwealth, shall be set in the annual list for their faculty, — the least practitioner fifty pounds, and the others in proportion according to their practice; to be assessed at the discretion of the listers of the respective towns where said attorneys live during their practice as such. All tradesmen, traders, artificers, shall be rated in the lists proportionable to their gains and returns; in like manner, all warehouses, shops, workhouses and mills where the owners have particular improvement or advantage thereof, according to the best judgment and discretion of the listers.

[1] Acts and Laws of his Majesty's Province of New Hampshire (1761), 30, 180.

[2] Law of Jan. 2, 1772.

[3] Law of February 22, 1794; New Hampshire Laws of 1793, 472.

[4] An Act directing Listers in their Office and Duty. Printed in Laws of Vermont, 1779 (295 of Slade's State Papers). No copy of the laws of 1778 is known to be in existence. The laws of that year were embodied in the volume for 1779. See Wood, History of Taxation in Vermont, 32 and 36 (Columbia College Studies in History, Economics and Public Law, vol. iv, no. 3).

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In 1791 attorneys also were assessed "proportionable to their gains according to the best judgment and discretion of the listers."[1] And in 1797 the general provision was inserted that "all licensed attorneys, practitioners of physic or surgery, merchants, traders, owners of mills, mechanics, and all other persons who gain their livelihood by buying, selling, or exchanging, or by other traffic not in the regular channel of mercantile life," be listed in proportion to their returns.[2]

Outside of New England, the faculty tax was to be found also in Pennsylvania, though not until after the Revolution had commenced. In 1782 a law was enacted which imposed a poll tax on all freemen. But the law went on to say that

> all offices and posts of profit, trades, occupations and professions (that of ministers of the gospel of all denominations and schoolmasters only excepted) shall be rated at the discretion of the township, ward or district assessors, and two assistant freeholders of the proper township, ward or district, having due regard to the profits arising from them.[3]

In 1785 mechanics and manufacturers were added to the list of exempted classes. The discretion which this act left to the assessors was very slight, as the lower and higher limits of the tax were definitely fixed. In distinction from the faculty tax proper, this might rather be termed a classified poll tax with a very low maximum. For instance, freemen of no profession or calling might be assessed from fifty cents to ten dollars; mechanics and tradesmen, thirty cents to two dollars; tavern-keepers, shop-keepers and other retailers, fifty cents to five dollars; brokers, bankers, merchants, lawyers and physicians, one to ten dollars; persons of professions or occupations not before described, twenty-five cents to eight dollars. These rates applied only when the tax on real property amounted to one per cent. When the rate fell below this, the "taxes on occupations and professions," as they were called, were to be proportionately reduced.[4]

[1] Laws of 1791, 266.
[2] Compilation of Laws of 1797, 565. See Wood, *op. cit.*, 39.
[3] Laws of the Commonwealth of Pennsylvania (Dallas), II, 8.
[4] American State Papers, Finance, I, 428.

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In Delaware, also, we find the faculty tax. The law of 1752, indeed, simply provided that all persons should be assessed on their estates. But that this included more than mere visible property, is apparent from the section which states that single men who have no visible estates shall be assessed at not less than £12 nor more than £24, and that in all cases the assessors shall pay "due regard to such as are poor and have a charge of children."[1] When Wolcott described the system, he spoke of it as based on the assessment of profits. But in 1796, when a new law was passed, provision was made for "ascertaining the stock of merchants, tradesmen, mechanics and manufacturers, for the purpose of regulating assessments upon such persons, proportioned to their gains and profits."[2] In other words, stock in trade was now assessed as personal property.

Even in the more southern states the faculty tax was not unknown. In Maryland, during the colonial period, the tax system was very primitive; as its historian states, taxes were levied "by even and equal assessment, without reference to ability to pay, revenue enjoyed or property worth."[3] But when the state constitution was adopted in 1777, and the poll tax was abolished, not only was a property tax inaugurated, but provision was made for the faculty tax by imposing an assessment of one-quarter of one per cent on the "amount received yearly" by "every person having any public office of profit, or an annuity or stipend," and on the "clear yearly profit" of "every person practising law or physic, every hired clerk acting without commission, every factor, agent or manager trading or using commerce in this state."[4] In 1779 the tax was raised to two and a half per cent.[5] But in the next year the whole system was abolished.

[1] Laws of the Government of New-castle, Kent and Sussex upon Delaware (Philadelphia, 1752), 234.

[2] American State Papers, Finance, I, 429.

[3] Sketch of Tax Legislation in Maryland. Printed as an appendix to the Report of the Maryland Tax Commission, 1888, cxxix.

[4] Maryland, Laws of 1777, ch. 22, secs. 5, 6.

[5] Laws of 1779, ch. 35, sec. 48.

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In South Carolina the faculty tax began earlier. We find that in 1701 a law was enacted which imposed a tax on the citizens according to their "estates, stocks and abilities, or the profits that any of them do make off or from any public office or employment." And two years later it was provided that individuals should be assessed on their "estates, goods, merchandizes, stocks, abilities, offices and places of profits of whatever kind or nature soever." This system continued throughout the century. The law of 1777, which was the first under the state constitution, phrased it a little differently by providing for a tax on "the profits of all faculties and professions, the clergy excepted, factorage, employments, handicrafts and trades throughout this state."[1] And Wolcott, in his report of 1796, describes the system as "founded on conjectural estimates, according to the best judgment of the collectors." These estimates were "understood to be very moderate." In Charleston, for instance, they were graduated according to the circumstances of individuals, from $100 to $5000.[2]

Finally, it may be said that in Virginia an attempt was made in 1786 to introduce the faculty tax, by assessing attorneys, merchants, physicians, surgeons and apothecaries. But the experiment lasted only four years. In 1790 the whole system was abolished.[3]

In addition to these cases of the taxation of profits as such, there were many cases in which, while the tax was imposed on property, the assessment was made on the basis of product. That is, it was deemed easier to ascertain the profits than the value of the property: the property was gauged by the revenue. Thus in Massachusetts in 1692 all estates real and personal were to be rated "at a quarter part of one year's value or income thereof." To make this clearer, it was provided in the following year that "all houses, warehouses, tanyards, orchards, pastures, meadows and lands, mills, cranes and wharffs be estimated at seven years' income as they are or may be let for;

[1] Cooper, Statutes at Large of South Carolina, II, 36, 183; IV, 366.
[2] American State Papers, Finance, I, 435.
[3] Hening's Statutes, XII, 283; XIII, 114.

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which seven years' income is to be esteemed and reputed the value of craftman, for his income." From this time on until the Revolutionary period the valuation of real estate was computed on the income derived from it, but the number of years varied. From 1698 to 1700 the valuation was one year's income, but during most of the eighteenth century it was six years' income.[1]

In Rhode Island the ratemakers were to "take a narrow inspection of the lands and meadows and so to judge of the yearly profit at their wisdom and discretion."[2] In New Hampshire the assessors were directed to take the estimated produce of the land as a basis; while houses, mills, wharves and ferries were valued at one-tenth or one-twelfth of their yearly net income, after deducting repairs.[3] In New York it was customary to assess land according to its annual yield, even when other property was valued at a fixed sum. We find this as early as 1693, and frequently thereafter.[4] Even as late as the middle of the eighteenth century the New York assessors for the general property tax took an oath to estimate the property by the product—a pound for every shilling.[5] In Delaware, even after 1796, real estate was still valued according to the rents arising therefrom.[6] Finally, in Virginia, although land was generally estimated at the presumed capital value, the yearly rent or income was sometimes utilized, especially in the towns, as a basis for estimating the value.[7] Toward the close of the century we are told that the usual tax on city property was "five-sixths of one per cent of the ascertained or estimated yearly rent or income."[8]

[1] Acts and Resolves of the Province of Massachusetts Bay, I, 29, 92, 413.

[2] Colonial Records of Rhode Island, III, 300.

[3] Acts of Jan. 2, 1772, and Feb. 22, 1794. Laws of the State of New Hampshire, passed at the General Court, 1793, 471.

[4] Journal of N. Y., March 9, 1693. *Cf.* Act of September 29, 1709.

[5] Oath of assessors, Law of 1743, sec. 13; in Van Schaack's Laws of New York from 1691 to 1773.

[6] American State Papers, Finance, I, 429.

[7] Act of 1793. Shepherd's Statutes at Large of Virginia, 1792--1806, I, 224.

[8] American State Papers, Finance, I, 431.

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III. *The Nineteenth Century.*

During the early decades of the nineteenth century not only did the faculty tax gradually fall into disuse, but with the increasing mobility of landed property, assessment according to selling value, instead of annual value or product, became universal. Let us trace further the history of the faculty tax.

In Vermont the old custom continued for several decades. In the consolidated act of 1825 certain classes liable to the faculty tax were to be assessed according to their gains, but with both a minimum and a maximum limit. For instance, attorneys, physicians and surgeons were listed at not less than $10, nor more than $300, "according to their respective gains." Merchants and traders were taxed at figures varying from $15 to $600, "in proportion to their several gains, taking into consideration the capital employed in said business." Mechanics and manufacturers were assessed up to $100, "according to the best discretion and judgment of the listers." This survival of the old custom, however, worked very badly and produced much dissatisfaction. The act of 1841 dropped all reference to the faculty tax, and although by an act of the following year the tax was revived as to attorneys, physicians and surgeons, it was finally abolished in 1850 amid general jubilation.[1]

In Connecticut the old custom continued, nominally at least, until the adoption of the new constitution in 1819. The revenue commission of 1887 described the old system as follows:[2]

> Connecticut from her earliest history had followed the plan of taxing incomes rather than property. Those pursuing any trade or profession were assessed on an estimate of their annual gains. Real estate was rated not according to its value, but in proportion to the annual income which, on the average, it was deemed likely to produce. Land . . . was put in the list at a fixed rate for each kind . . . not because these sums were deemed to be the value of the

[1] Laws of Vermont, 1825, chap. ix; 1841, chap. xvi; 1842, chap. i; 1850, chap. xxxix, p. 28.

[2] Report of the Special Commission of Connecticut on Taxation, 1887, 9–10.

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land, but because they were thought to represent the average income they would produce.

This "ancient system of income taxes," as it was called by the commission, came to an end in 1819, and was replaced by the plan of taxing property according to the modern methods.[1]

In Rhode Island and New Hampshire, as we know, the old custom did not survive the eighteenth century. Massachusetts enjoys the distinction of being the only state in the Union in which the faculty tax has continued down to the present day. In preceding pages we traced its history to the law of 1777, which, as we saw, was virtually continued by the new constitution of 1780, and we saw the gradual process by which the term "faculty tax" was displaced both in popular usage and in legal parlance by "income tax." No change was made in the wording of the provisions until 1821, when an act was passed which included among the sums to be returned to the assessor

> the amount of the income of such inhabitants from any profession, handicraft, trade or employment, or gained by trading at sea or on land, and also all other property of the several kinds returned in the last valuation, or liable to taxation by any law.[2]

This wording is repeated in the act of 1830,[3] but in this act the term faculty is omitted; and it never reappears in later legislation. In the revised statutes of 1836 another change was made through the omission of the word "handicraft." The section reads as follows:

> Personal property shall, for the purpose of taxation, be construed to include . . . . income from any profession, trade or employment, or from an annuity, unless the capital of such annuity shall be taxed in this state.[4]

The next change came in the law of 1849,[5] providing that

[1] Connecticut Session Laws of 1819, 338.

[2] General Laws of Massachusetts from the adoption of the Constitution to 1831 (3 vols.), vol. ii, laws of 1821, chap. 107, sec. 2.

[3] Session Laws of 1830, chap. 86.

[4] Revised Statutes, chap. 7, sec. 4.

[5] Laws of 1849, chap. 149.

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income from any profession, trade or employment, shall not be construed to be personal estate for the purpose of taxation, except such portion of said income as shall exceed the sum of six hundred dollars per annum; provided, however, that no income shall be taxed which is derived from any property or estate which is the subject of taxation.

In 1866 the exemption was increased to one thousand dollars, and in 1873, as a result of a compromise with those who were attempting to have the law entirely repealed, to two thousand dollars.[1] This is still the law to-day.

In fixing the meaning of the law of 1849 it has been held by the court that the clause exempting incomes derived from property already taxed does not apply to the profits of merchants and others who employ such property in their business.[2] But the custom has arisen in Boston of exempting six per cent of the income as representing interest on capital, and of levying the tax only on the surplus profits. As a matter of fact incomes are taxed in only a very few places in the state, and on only a very few inhabitants of these places. An official commission tells us that "in a great majority of places the assessors make no mention whatever of income in their valuation lists," while "in others the tax is assessed only upon incomes derived from salaries and the learned professions."[3] In one town of 14,000 inhabitants only thirteen persons were taxed on their incomes in 1874. The injustice of such a method is apparent when it is remembered that personal property itself is reached to only a very small extent. So that practically the burden falls chiefly on the salaried and professional classes. But the tax is so much of a farce that even this burden is very light. It is impossible to say anything definite about the proceeds, as the returns are included in those of the general property tax.

The only other state in which the faculty tax lasted until late in this century was South Carolina. In Delaware and Maryland, as we have seen, the tax disappeared before the close

[1] Laws of 1866, chap. 48; Laws of 1873, chap. 354.

[2] Wilcox *vs.* Middlesex, 103 Mass., 544; *cf.* Collector *vs.* Day, 11 Wall, 113.

[3] Report of the [Mass.] Commissioners [on] Taxation and Exemption therefrom, 1875, p. 50.

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of the last century. But in South Carolina we find the tax on "factorage, employments, faculties and professions" mentioned in each annual tax law until 1865.[1] In 1866 a far more comprehensive tax was imposed, in which incomes from "employments, faculties and professions" were included.[2] The context shows, however, that only the strictly professional classes could have been referred to by these words. But with the adoption of the new constitution in 1868, what is essentially the present method of taxation was introduced.

The faculty tax was also employed in local taxation in South Carolina for a considerable period. In 1809 an ordinance of the city of Charleston declared subject to taxation "all profit or increase arising from the pursuit of any faculty or profession, occupation, trade or employment." Clergymen, judges and schoolmasters or other teachers were exempt. The rate was one-third of one per cent.[3] In 1844 the same words were used in a Charleston ordinance, except that "gross profit or gross income" took the place of "all profit or increase,"[4] and mechanics also were made exempt.

Except in the two states of Massachusetts and South Carolina, thus, the old custom of assessing profits as an adjunct to the property tax had totally disappeared by the middle of the century. Moreover, the assessment of real estate according to profits had almost everywhere been supplanted by assessment on selling value. The only exception was Delaware. In that state yet to-day, it is provided that when houses or lots yield an annual rent, the owner shall be assessed for every $12 of rent as for $100 capital. In the case of ground rents, $8 of rent is to be assessed for $100 capital.[5] In all other respects, however, lands are assessed as elsewhere on their selling value.

[1] Statutes at Large of South Carolina, XIII, 237.

[2] *Ibid.*, XIII, 367.

[3] This ordinance is quoted in City Council *vs.* Lee, 3 Brevard, 226, decided in 1812, which held that public salaries were not included.

[4] Quoted in State *vs.* Elfe, 3 Strobhart, 318.

[5] Revised Statutes of Delaware, 1893, chap. 10, secs. 5 and 3, pp. 107–8.

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IV. *Income Taxes Proper.*

Up to this point we have discussed the partial taxation of profits as a survival of the colonial faculty tax. But shortly before the middle of the present century a movement began in several of the states to secure greater equality in taxation. This movement, which originally bore some resemblance to the earlier attempts in the colonies, soon grew into something different. We reached, in short, the era of true income taxes. As their history has never been related, it may be profitable to consider the laws somewhat in detail. The three states to which attention is directed are Virginia, North Carolina and Alabama.

In Virginia the taxation of incomes dates back to 1843. In that year a law was enacted imposing what were technically known as a "tax on incomes," a "tax on fees" and a "tax on interest." The tax on incomes was a tax of one per cent on all incomes over $400 "in consideration of the discharge of any office or employment in the service of the state, or of any corporation, company, firm or person." The income of ministers of the gospel and incomes from labor in mechanic arts, trades, handicrafts or manufactures were exempt. The "tax on fees," at the same rate, was imposed on attorneys, physicians, dentists, and "all other persons in respect to their fees above $400, derived from any office, calling or profession." The "tax on interest" was at the rate of 2½ per cent on all "interest or profit, whether arising from money loaned, or from bonds, notes or other securities for money or from bonds or certificates of debt of states or public corporations."[1] In other words, this was a tax on salaries and professional income, and a partial tax on funded income, with separate rates for temporary and for permanent income. In 1846 the "tax on interest" was reduced and made applicable only to profits over six hundred dollars.[2] In 1853 that part of the tax which applied to income from public securities was raised to 3⅓ per cent. But by this law the tax on "incomes" and "fees" was graduated. Incomes below $200 were exempt. On incomes from $200 to $250 the rate was one-

[1] Law of March 27, 1843; Acts 1842–43, 6–8.

[2] Law of Feb. 28, 1846; Acts 1845–46, 7.

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quarter of one per cent; and it rose by regular increments to one per cent on incomes of over $1000.[1] After minor changes in 1856 and 1859 the tax was in 1863 practically converted into a general income tax, and it then received that appellation. Under the rubric "incomes and fees," all incomes from offices or employments, ministers of the gospel only being exempt, were taxed 2½ per cent on the excess over $500. Incomes from interest on public bonds were taxed 17 per cent. A new schedule, the "tax on profits," was established, under which a tax of 10 per cent was imposed on the net income in excess of $3000 from all profits from the use of money from another, and profits from any trade, business or occupation. After an elaborate rearrangement of schedules and rates in 1866,[2] an act of 1870 abolished all schedules and imposed a general tax of 2½ per cent on all incomes over $1500. Incomes were defined as "all gains or profits from any source;" and deductions were granted for losses by fire or shipwreck, losses incurred in trade, sums paid for fertilizers, labor or service, except the outlay for improvements, new buildings and betterments.[3] After several reductions in the rate the present form of the tax was adopted in 1884. All incomes, except state salaries, are taxed one per cent. The limit of exemption is fixed at $600, and deductions are permitted for losses incurred in trade, for taxes, rent and the expenses of cultivating land.[4]

Virginia is the only commonwealth in which the income tax figures as a separate source of state revenue. But the proceeds of the tax are insignificant, amounting in 1891–92 to $54,154 out of a total revenue from direct taxes of almost two millions. About four-fifths of the tax was levied in seven or eight cities, almost one-half in Richmond alone.

In North Carolina the income tax dates from 1849. In that year a law was passed with the following preamble:

> Whereas there are many wealthy citizens of this state who derive very considerable revenues from moneys which produce interest,

[1] Law of April 7, 1853; Acts 1852–53, chap. 8.
[2] Laws of February 28, 1866, and April 20, 1867.
[3] Law of June 29, 1870, sec. 16; July 9, 1870, sec. 7.
[4] Acts of 1883–84, chap. 450, Sched. D, secs. 10–11, 565.

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dividends and profits, and who do not contribute a due proportion to the public exigencies of the same, be it resolved, *etc.*

The dissatisfaction here manifested led to a three per cent tax on all moneys at interest, on all profits from moneys invested in shares or trade, and on the salaries, practice and fees of physicians, lawyers and all others in excess of $500.[1] The tax was popularly known as the "tax on salaries and fees," but in reality it formed an income tax on all commercial and precarious incomes. After some minor changes in 1851 and 1859 the tax was gradually transformed, until it became a tax on income from property not already taxed. This was due in part to the constitutional prohibition against levying an income tax on income from taxed property.[2] The law of 1874 permitted deductions not only for the amount derived from property taxed, but also for that derived from any trade, purchase or profession "taxed by the law of this state."[3] This form of the tax is best seen in the law of 1879, which imposed a tax of one per cent on "the net incomes and profits, other than that derived from property taxed, from any source whatever." Net income was defined as the gross income after deducting taxes, rent, interest on incumbrances, repairs of buildings, ordinary expenses of the business from which the income was derived, and the necessary expenses of the family; but the total deductions could not exceed $1000.[4] The income tax was declared to include interest on national, commonwealth and foreign state securities. A number of minor modifications were made from time to time,[5] and finally, in 1893, the principles of both progression and differentiation were introduced. In the case of gross profits and incomes derived from property not taxed the rate is now five per cent; on incomes from salaries and fees, one-half of one per cent on the excess over $1000;[6] on all other incomes (except from property already taxed) the rate is graduated from

[1] North Carolina, Acts of 1848–49, chap. 77, 129. Law of January 29, 1849.
[2] Const. of 1868, art. v, sec. 3; Const. of 1876, art. v, sec. 3.
[3] Acts of 1873–74, chap. 133, sec. 9, par. 8.
[4] Revenue Act, 1879, class ii, sec. 1.
[5] Revenue Acts, 1881, class ii, sec. 1; 1885, sec. 7; 1889, Schedule A, sec. 5.
[6] Revenue Act, 1893, Schedule A, sec. 5.

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one-fourth of one per cent on those between $1000 and $5000, to two per cent on those over $20,000.[1] Although the taxpayers are required by law to return their net incomes, with the sources from which they are derived, the tax is to a large extent a farce. The law is almost a dead letter.

Alabama also at one time had an income tax. It began, as in the other Southern states, as a tax on salaries and professional income. In 1849 the salaries and incomes of all public officers or officers of corporations were taxed one-half of one per cent; while lawyers, doctors and dentists who had practiced three years were required to pay either a specific tax of stated amount or one-half of one per cent on their incomes.[2] After the Civil War this tax was widened into a general income tax. The law of 1867 provided for a tax of one per cent "upon all annual gains, profits or incomes of every person residing in the state, from whatever sources derived, and upon salaries and fees of public officers, and upon salaries of all other persons." An exemption of $500 was made in all cases. Deductions were allowed for taxes, rent or rental value of homestead occupied, income from dividends of corporations, expenses of business, and repairs.[3] The law was supplemented by the acts of 1875 and 1876, which provided in general for the taxation of all salaries, gains, incomes and profits.[4] The tax was nominally levied on both property and income; but the proceeds were so insignificant that it was abolished altogether in 1884.

V. *Conclusions.*

After this tedious review of the facts, let us attempt to ascertain exactly what they mean.

At the very outset the distinction between real and personal taxes must be borne in mind. A real tax is a tax on things; a personal tax is a tax on persons. A land tax, for instance,

[1] Revenue Act, 1895, Schedule A, sec. 5.
[2] Alabama Laws of 1849, no. 1. *Cf.* Code of 1852, par. 391, secs. 25, 26, 31.
[3] Law of February 19, 1867, sec. 3. *Cf.* Rev. Code (1867), par. 435.
[4] Law of March 19, 1875, sec. 11; March 6, 1876, sec. 4.

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whether it be levied on property or on produce, is a tax on the land — on the thing itself, a real tax. No attention is paid to the personal condition of the landowner; the government looks to the land itself, as in the case of a tax on houses or a tax on tangible personalty. The objective point is the thing rather than the person. Of course it is always the person, the individual, who is under obligation to pay taxes to the state. But the endeavor to assess the individual as such has always met with great difficulty, and many governments have therefore had recourse to the various pieces of property rather than to the person. The steps in this development are interesting.

In the beginning, when the conception of taxable capacity first forced itself through, as in the early mediæval towns, we find the general property tax. In all early communities, and especially under the feudal system, land is very rarely sold. We accordingly find the earliest land taxes to be taxes on gross produce. The ability of the farmer is measured by the produce of the land, the ability of the land-owner by the rental from the land. Thus the land taxes in early mediæval Europe were taxes on produce or rents. In the more democratic communities, like those of Switzerland, the land tax soon became a tax on the selling value. In the other European countries this transformation was effected a little later, but it was quite general; and everywhere the tax was a tax on the actual value. Only in relatively recent times has it been deemed possible in most of the European states to get more closely at the taxable capacity of the land by a careful estimate of its actual yield. On the greater part of the continent of Europe to-day the land taxes are again assessed on the basis of the yield, but now on net yield, and detailed surveys and valuations are made in order to determine this precisely.

In America the development was very much the same. At the outset, when land was not bought and sold readily, the tax was assessed more or less arbitrarily, either according to the quality of the land or according to its assumed produce. In only a few cases was the still more primitive method pursued of taxing land simply by quantity. But all

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these taxes were real taxes; they were taxes on the thing itself, on the land, not on the income of the landowner. When in the course of time transfers of land began to be more frequent, these produce taxes turned into taxes on the actual or selling value, as is the case everywhere to-day throughout the United States. This plan, with the democratic methods of assessment, is supposed to furnish a sufficiently close approach to the truth. We make no attempt, as a rule, to ascertain the exact produce of each parcel of land as a basis for the tax. But whether we assess land upon its produce or upon its value, is immaterial; the tax is on the thing itself.

In addition to this land tax, we find in all partly developed communities a tax upon personalty also. In so far as most of the personalty is visible and tangible, the natural basis of assessment is its actual or selling value. This basis was used in all the mediæval taxes as well as in the American colonies. But it was very soon recognized that property alone, whether in land or in personalty, was not an adequate measure of taxable capacity. Revenue is derived from other sources than from property. Hence it was that an attempt was made to supplement the property tax by a faculty tax upon persons that derived revenue from these other sources. The tax on earnings was supposed to correspond to the property or produce tax on special pieces of personalty or realty. It was not an income tax in the modern sense. By an income tax we mean a tax upon the personal income of the individual. It is a personal tax, not a tax on things, not a real tax. Allowance is made for indebtedness and for other elements affecting the personal situation of the taxpayer. But this faculty tax, as it was called in mediæval Europe as well as in colonial America, was not levied on the total income of the individual. It was a tax not on actual profits, but on assumed profits. Just as articles of personal property were put down on the lists at fixed rates; just as plots of land were set down at sums supposed to represent their capitalized annual produce: so the individuals subject to the faculty tax were not required to make returns of their earnings, but were assessed by the listers at fixed amounts.

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As we have seen more specifically in the cases of Connecticut and South Carolina — and the same was true in the other colonies — the faculty tax was nothing but a classified product tax, in which different employments and different classes within each employment were rated at fixed amounts. It was precisely for this reason that the faculty tax, which at the outset gave satisfaction, soon became antiquated and unjust. Instead of being a tax on actual profits or gains as a part of a general tax on incomes, in which attention might be paid to the individual situation of the taxpayer, it was nothing but an arbitrarily-levied class-tax on certain assumed earnings. It bore very little relation to the actual income; it became grievous and unequal; and it was therefore allowed to fall into disuse. It never was an income tax in the modern sense.

On the other hand, the state income taxes of this century, with the exception of that of Massachusetts, which is simply a survival of the old faculty tax, have been true income taxes. They have not been confined to the assumed gross profits of certain particular classes, but have been levied on the actual total income of the taxpayer. The difference between the colonial taxes on profits and the state income taxes is very much like that between the European taxes on product and the income taxes. In Germany, in France and in many other countries, after the general property tax had been abandoned, and after it had been recognized that net product was in some respects a better index of taxable capacity than property, the whole tax system was changed into one on product: that is, first we had the land tax, which was levied on net produce; then came the buildings tax, levied on the rental value of buildings; then came the tax on capital, according to the yield of capital; then came the tax on business, in which the assumed profits were calculated according to the outward signs. All these were taxes on things — on the land, on the house, on the business, on the capital; and finally, to round out the system, there was sometimes imposed a tax on the remaining source of profit, that is, the professions and employments which yield a produce in the shape of a salary or compensation. These taxes are still

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to-day known as real taxes (*impôts réels*), or produce taxes (*Ertrags-Steuern*). It is only within a comparatively recent period that product has come to be recognized as a less satisfactory theoretical basis of taxation than income. Product looks at the thing that produces; income looks at the person that receives. In the first case, no allowance is made for debts or other qualifying circumstances; in the second, such allowance is possible. As a consequence, modern income taxes have been imposed partly in the place of, and partly in addition to, these produce taxes. The system of real taxes is being supplanted by that of personal taxes. Or, if we will use the term income, the first class of taxes may be called indirect income taxes, because the income of the individual is only indirectly reached; while the new and more general taxes are direct income taxes, and have the characteristics of a personal, not a real tax.

This is not the place to enter upon the discussion as to what was meant by the term direct tax in the Constitution of the United States, and whether it included this faculty tax — the only form of profits taxation then known in America. If there is any value in the above exposition, however, it is plain that the profits taxes of the American colonies were not direct income taxes, and that in so far as they are called income taxes at all, they must be classed as indirect income taxes. It is very remarkable that in all the legal briefs and arguments presented to the supreme court in connection with the recent income-tax cases no reference was made to the statement of Oliver Wolcott, the secretary of the treasury who in 1796 drew up the celebrated report on direct taxes in the states. Wolcott was thoroughly familiar with all the details of the laws, and in his enumeration of the various taxes imposed he described the faculty tax in the following words:

> 4th. *Taxes on the profits resulting from certain employments.* This head will comprise a variety of taxes collected in certain of the states upon lawyers, physicians and other professions, upon merchants, traders and mechanics, and upon mills, furnaces and other manufactories. In some states these taxes are attempted to be proportioned

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to the gains and profits of individuals, in which cases they are both arbitrary and unequal; in other states the taxes are uniform, in which cases they are only unequal.

It is presumed that taxes of this nature cannot be considered as of that description which the constitution requires to be apportioned among the states. . . . It is impossible to render them exactly equal; that they are easy of collection, that their operation is indirect, and that they are capable of being rendered perfectly certain, are recommendations in their favor.[1]

Oliver Wolcott clearly saw, as he expressed it, that the operation of these taxes was indirect, and, with a full knowledge of everything that had been said on the subject in every state, he came to the conclusion that they were not direct taxes in the contemplation of the Constitution. The points which I desire to emphasize here are that these faculty taxes were not direct income taxes at all; that they were simply an addendum to the early land taxes, originally levied on product; and that with the change of the taxes on product into taxes on property these faculty taxes gradually fell into disuse. To call them income taxes is a misnomer. Income taxes in the modern sense were levied for the first time in England in 1799, and it was at a considerably later period that they spread to other countries. To claim, then, that our colonial taxes on faculty were income taxes, betrays a confusion of thought and an ignorance of economic distinctions. The faculty tax had its origin in the same motives that have led to the introduction of modern income taxes, but it was not an income tax; just as the French land tax and the German *Lohnsteuer* of to-day, levied on the produce of land and of industry respectively, are not income taxes.

The distinction between real taxes, or taxes on product, on the one hand, and personal taxes, or taxes on income, on the other hand, is one of fundamental importance in the science of finance. To disregard it can only produce confusion. To observe it will enable us to explain what is otherwise inexplicable in American economic history.

EDWIN R. A. SELIGMAN.

[1] American State Papers, Finance, I, 439.

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IS THE SENATE UNFAIRLY CONSTITUTED?

THE inequality of representation in the Senate, always a subject more or less disturbing to logical minds, has been pushed into peculiar prominence of late by the contests over the silver and tariff questions, the admission of Utah, and the proposed admission of Arizona, New Mexico and Oklahoma as states. Much has been heard about the unfairness of permitting Nevada, with 45,000 inhabitants, to balance the vote of New York, with 6,000,000. The discussion of this question may seem a purely academic matter, since no state can be deprived of its equal representation in the Senate without its own consent; but there are various ways in which really flagrant injustice could be corrected. For instance, a constitutional amendment might be adopted, providing that no state should be admitted until it had consented to be satisfied with one senator so long as its population remained under 500,000; or, the most populous of the present states might be divided to reduce the discrepancies; or the number of senators might be reduced to one from each state, and disagreements between the two houses settled by votes in joint convention. The last plan would have advantages of its own, regardless of the merits of the question at present under discussion.

But before anything is done, the public must understand the precise nature of the evils it is proposed to cure. That the influence of the Senate is apt to be pernicious, is unpleasantly obvious; that the body has become intensely unpopular, is equally true: but the question is, whether these unfortunate facts are due in any degree to the ratio of representation, or whether they must be accounted for on other grounds. It may be on its face a glaring injustice that a combination of the senators from twenty-three states, with a population of 12,401,748, should be able to outvote twenty-one states, with a population of 49,507,158; but the question is whether such a combination

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ever did or ever could exist. The twenty-three states are situated on the Atlantic, Pacific and Gulf coasts, on the Canadian frontier, among the Rocky and Alleghany mountains and in the Great Basin and the Mississippi valley. Can any issue ever arise which will unite Vermont, Delaware, Florida and Nevada against Massachusetts, Virginia, Georgia and Kansas?

In considering this question I have thought it interesting to examine the records and see what has been our actual experience. I have analyzed the votes in the Senate on a number of the most hotly contested issues that have divided Congress since the foundation of our government, in order to discover whether any line of division between large and small states can be traced, and whether the system of representation in the Senate has had the practical effect of putting that body under the control of popular minorities. This analysis falls a little short of absolute accuracy in one respect, since the early records take no account of pairs. Where only one of a state's Senators is recorded as voting on a question I have counted the state on his side, while it is possible that his colleague may have been paired on the other side, and that therefore the vote of the state should be put down as divided. Such cases, however, are not very common, and doubtless such errors are as a rule so distributed as to offset each other. In all divisions since the Civil War the pairs are included and the results are exact. The votes selected as affording a fair test of the relations of the Senate to the majority of the nation are those on the Alien and Sedition Laws, 1798, the Embargo, 1807, the declaration of war against England, 1812, the incorporation of the Bank of the United States, 1816, the tariff of 1816, the Missouri Compromise, 1820, the tariff of 1824, the tariff of 1828, the renewal of the United States Bank charter, 1832, the establishment of the Independent Treasury, 1840, the attempted reëstablishment of the Bank of the United States, 1841, the tariff of 1842, the annexation of Texas, 1845, the tariff of 1846, the fugitive Slave Law, 1850, the Kansas-Nebraska Law, 1854, the Bland-Allison Silver Law, 1878, the substitution of the Republican tariff bill for the Mills Bill, 1889, the McKinley Law,

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1890, the abandonment of the Federal Elections Bill, 1891, and the repeal of the silver-purchase clause of the Sherman Silver Law, 1893. The war and reconstruction periods are passed over, because during those times the representation of the states was not complete. The figures of population are taken in each case from the census next preceding the vote, unless a new census came in the same or the following year.

The Alien Law passed the Senate June 8, 1798, by a vote of 16 to 7. The only state that cast a divided vote was North Carolina, with a population of 393,751. On the affirmative side were ranged the states of New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Delaware and South Carolina. On the negative were Virginia, Georgia, Kentucky and Tennessee. The eleven states voting in the affirmative had an aggregate population of 2,595,955, or an average of 235,996 each. The four states in the negative had an aggregate population of 939,526, or an average of 234,881 each. The two most populous states voted on opposite sides, and so did the two least populous. The first and the last state in rank acted together. The most populous state had twenty-one times as many inhabitants as the least populous, but the various discrepancies so nicely balanced each other that the average population of all the states on one side of the question and that of all those on the other differed by only 1,115.

The Sedition Law passed the Senate July 4, 1798, by a vote of 18 to 6. Maryland and New Hampshire, with a total population of 461,613 and an average of 230,806, were divided; Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, North Carolina and South Carolina, with a total population of 2,093,720, and an average of 232,635, voted in the affirmative; and Virginia, Kentucky and Tennessee, with 856,978 inhabitants in all and an average population of 285,659, voted in the negative.

To save space and the patience of the reader the catalogue of states in the remaining divisions may be omitted, and the net results reduced to tabular form.

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	Divided.	Aye.	No.
Embargo (Dec. 18, 1807).			
States	3	12	2
Total population	1,339,615	3,625,009	315,275
Average population	446,538	302,084	157,637
Declaration of War (June 17, 1812).			
States	5	8	4
Total population	2,500,362	3,893,872	632,307
Average population	500,072	486,734	158,077
Bank incorporation (April 3, 1816).			
States	9	7	2
Total population	3,180,739	2,858,859	1,173,509
Average population	353,415	408,408	586,754
Tariff, 1816 (April 19, 1816).			
States	3	13	2
Total population	1,889,805	4,287,246	936,046
Average population	629,935	329,788	468,023
Missouri Compromise (Feb. 16, 1820).[1]			
States	1	11	10
Total population	147,178	4,293,361	4,512,398
Average population	147,178	390,305	451,240
Tariff of 1824 (May 13, 1824).			
States	2	12	10
Total population	1,616,113	4,074,429	3,907,201
Average population	808,056	339,535	390,720
Tariff of 1828 (May 13, 1828).			
States	4	11	9
Total population	1,181,868	4,695,234	3,700,661
Average population	295,467	426,839	411,184
Bank Charter renewal (June 9, 1832).			
States	5	11	8
Total population	1,555,140	5,054,083	6,115,884
Average population	311,028	459,462	764,485
Independent Treasury (Jan. 17, 1840).			
States	6	11	7
Total population	2,963,441	9,925,202	3,550,373
Average population	493,907	902,291	507,196

[1] Division on the amendment reported by the judiciary committee adding the bill for the admission of Missouri to that for the admission of Maine.

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	DIVIDED.	AYE.	NO.
Reëstablishing U. S. Bank. Passage of bill over veto, Aug. 19, 1841).			
States	7	10	9
Total population	5,022,651	4,723,160	7,145,296
Average population	717,521	472,316	792,921
Tariff of 1842 (Aug. 27, 1842).			
States	2	11	12
Total population	388,063	8,196,902	7,476,932
Average population	194,031	745,173	623,077
Annexation of Texas (Feb. 26, 1845).			
States	7	10	9
Total population	3,764,878	8,474,959	4,650,970
Average population	537,839	847,496	516,774
Tariff of 1846 (July 28, 1846).			
States	6	11	10
Total population	4,449,290	6,666,738	5,627,145
Average population	741,548	606,067	562,714
Fugitive Slave Law (Aug. 21, 1850).			
States	1	16	9
Total population	2,311,786	9,340,540	5,556,207
Average population	2,311,786	583,783	617,356
Kansas-Nebraska Law (May 25, 1854).			
States	2	21	8
Total population	1,373,509	14,160,388	7,013,994
Average population	686,754	674,304	876,749
Bland-Allison Silver Law (Feb. 15, 1878).			
States	8	21	8
Total population	5,494,694	22,979,552	8,781,484
Average population	686,836	1,094,264	1,097,685
Substitution of Republican Tariff for Mills Bill (Jan. 22, 1889).			
States	3	18	17
Total population	6,536,426	30,035,186	24,199,128
Average population	2,178,808	1,668,621	1,423,478

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	Divided.	Ave.	No.
McKinley Law (Sept. 10, 1890).			
States	3	22	17
Total population	5,048,939	30,896,103	25,686,615
Average population	1,682,979	1,404,368	1,510,977
Sidetracking Federal Elections Bill (Jan. 22, 1891).			
States	5	19½[1]	19
Total population	11,827,745	27,362,704	22,728,457
Average population	2,365,549	1,403,215	1,196,234
Repeal of Silver-Purchase Law (Oct. 30, 1893).			
States	8	21	15
Total population	15,836,129	32,331,452	13,741,335
Average population	1,979,516	1,539,593	916,089

An examination of these tables discloses the fact that, while the most populous state in the Union now has 133 times as many inhabitants as the least populous, the votes on practical questions have been so balanced that in all the twenty-one cases cited there has been only one instance in which the average population of the states ranged on one side has been as much as twice that of the states ranged on the other. In most cases the balance has been quite as even as it would have been with Congressional districts. There is the further interesting fact, which I have not been able to bring out in the tables, that in every case, without exception, the small states have been divided. There is no trace anywhere of that combination of small states against large which is thought to portend danger to our political system. In the latest case analyzed, and the one which has excited the warmest discussion — the vote on the repeal of the Silver Purchase Law — we have Wyoming, Delaware, Rhode Island, New Hampshire, Vermont and Washington on one side, and Nevada, Idaho, Montana, North Dakota, South Dakota and Florida on the other, with Oregon divided. These were the only states

[1] One senator absent and not paired.

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having less than 400,000 inhabitants each, and the division among them could hardly have been more even.

Further light upon the principle of equal representation by states may be gained by studying the history of presidential elections. An examination of the records from the beginning shows that if each state had been allowed only one vote, and had cast that vote in accordance with the action really taken by the majority of its electors, the result would have been precisely what it actually was, with but two exceptions, namely, in the election of 1848, when there would have been a tie instead of a majority for Taylor, and in that of 1880, when there would have been another tie, instead of a majority for Garfield. The latter contest beautifully illustrates the harmonious balance of large and small states in our political system. Nineteen states voted for Garfield and nineteen for Hancock—a result most accurately adjusted to the popular vote—4,449,053 on one side and 4,442,035 on the other.

The fact that several states which happen for the moment to be of small population are situated west of the Missouri River has given the question of senatorial representation a sectional aspect, heightened by the contrast of extreme examples, such as New York and Nevada. It is obvious, however, that since the practical grievance is not single votes but possible control by minorities, no comparison is fair that does not include great groups of states. If we start at the Pacific coast and go eastward until we have taken in half the states in the Union, we find that the twenty-two so included had an aggregate population at the last census of 25,738,747, or an average of 1,169,943 each. The total population of the remaining twenty-two was 36,170,159, and the average 1,644,098. Here is certainly a discrepancy, but one no greater than exists among Congressional and legislative districts in many states. Moreover it is one that is rapidly disappearing with the growth of the West. All of the Western States are immense in area, and almost all are well adapted to support a dense population. The real grievance of the future will be, not that of New York and Pennsylvania against Nevada and Wyoming, but that of

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Texas, California, Oregon and Washington against Rhode Island, Delaware, New Hampshire and Vermont.

There is still less ground for present complaints of inequality in representation as between the North and the South. If we draw a line from the Atlantic to the Pacific in such a way that half of the states lie on one side and half on the other, we find that the northern group contains an aggregate population of 33,627,144 and an average of 1,528,506 to each state, while the aggregate of the southern group is 28,281,762 and the average 1,285,534. The approximation to equality becomes even closer if we take a natural instead of an arbitrary line of division. On such a division the twenty-eight states commonly called Northern are found to average 1,421,112, and the sixteen states commonly called Southern 1,388,610 inhabitants each.

There remains another point which is usually overlooked. Each state is commonly regarded as a unit, and therefore, when the senators from New York are outvoted, it is assumed that the wishes of 6,000,000 people are disregarded. But the truth is, of course, that the lines of political cleavage run across state boundaries. It is not the population of a state, therefore, but the size of its popular majority, that determines the moral weight of its support of one policy or another. In 1884, for instance, New York cast 1,171,312 votes for president, and Nevada only 12,771. But in New York the votes of 562,001 Democrats were canceled by those of 562,001 Republicans, while those of 25,001 Prohibitionists, 17,002 Greenbackers and 4,260 unassorted citizens were wholly lost. The thirty-six electoral votes of the state were given to Cleveland by 1,047 men who furnished the Democratic plurality, and if 524 of these had voted the other way, all the thirty-six electors would have gone to Blaine. In Nevada, on the other hand, there was a net Republican majority of 1,615, which was sufficient to cancel the Democratic plurality in New York, with 568 votes to spare. If there had been no states in the Union but these two, there would have been 569,194 popular and three electoral votes for Blaine, against 568,626 popular and thirty-six electoral votes for Cleveland. The 562,001 Republican voters

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of New York would have had no representatives in the Electoral College except the three electors from Nevada. Certainly neither Democrats nor Republicans in New York could complain of Nevada's over-representation.

Again, in 1890 New York cast two votes in the Senate in favor of the McKinley Bill, and Florida two against it. Here, apparently, the wishes of 6,000,000 people were neutralized by those of less than 400,000. But the actual fact was that, instead of representing the wishes of 6,000,000 people, the New York senators did not represent a net preponderance of even one voter in their own state. On the contrary, the election held two months later showed that there was a majority of nearly 100,000 against them. The Florida senators, in fact, represented a majority of New Yorkers.

These examples of compensation meet us at every turn. Whenever we look at one point we see injustice, but under a comprehensive view all the minor inequalities are absorbed in a wider justice. There are flagrant defects in the constitution of the Senate, but, so far as present practical conditions are concerned, they do not lie in the ratio of representation. The real weak point is the irresponsibility and consequent infidelity of the individual senators. If each senator were truly representative of his own state, the relative power of the states could safely be left to take care of itself. It was not the "rotten boroughs" that brought reproach upon the Senate during the recent tariff wrangle, but the senators from the great states of New York, New Jersey, Ohio and Maryland. What is needed to prevent a recurrence of such scandals is to make senators continuously and effectively responsible to their constituents, by depriving the legislatures of the power of election and giving the people power to recall unfaithful senators.

S. E. MOFFETT.

SAN FRANCISCO, CAL.

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KOSSUTH: A SKETCH OF A REVOLUTIONIST. II.

VII. *Kossuth's Escape.*

THE sympathy manifested by the people of England with the Hungarian cause, especially after the Russian intervention, confirmed Lord Palmerston in his solicitude in regard to what was taking place in the East. On the first of August, 1849, he instructed Lord Ponsonby to inquire whether any arrangements were contemplated, in the event of the termination of the war, which would be at variance with the provisions of the Treaty of Vienna touching the balance of power in Europe, and also to make known to the Austrian government that he was authorized to exercise his good offices between that government and Hungary, if the intervention of a third power might in any respect be acceptable. Lord Ponsonby was further directed to call attention to certain proclamations that had been issued at Pest by the Austrian General Haynau, in which it was declared that the penalty of summary execution would be visited on every one who should by word or deed aid, support or participate in the cause of the rebels, or insult the Austrian or Russian soldiers. These instructions were brought to the notice of Prince Schwartzenberg on the day after Görgei's surrender. The manner in which they were received may, without entering into details, be inferred from Lord Ponsonby's statement that when he spoke of General Haynau's proclamation, the prince, "in very civil terms," told him "that the Austrians were the best judges of their own affairs."

It was not characteristic of Lord Palmerston, however, to abandon a line of policy merely because it proved to be ungrateful to those whom it affected. Nor did his interest in the Hungarian question abate with the downfall of the revolution. The conquered country was divided into military districts, and General Haynau pursued a policy of great severity. A large number of Hungarian officers were executed, though a general

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amnesty was proclaimed as to the army from sergeants downwards. Count Louis Batthyányi was sentenced to be hanged; after attempting to commit suicide, however, he was shot. Palmerston, moved by Haynau's proceedings, instructed Lord Ponsonby to urge upon the Austrian government — and he caused a similar representation to be made to Russia — a concession to the national feelings of the Hungarians. Again his advice was repulsed. The world, Prince Schwartzenberg declared, was agitated by a spirit of subversion. England had not been free from it, as was shown by the case of Canada, of the island of Cephalonia, and, last of all, of "unhappy Ireland." But whenever revolt sprang up anywhere within the vast limits of the British Empire, the English government always maintained its authority "even at the cost of torrents of blood." It did not lie with Austria, said the prince, to censure. Whatever the opinion she might have formed of insurrectionary movements in the British Empire, as well as of the means employed by the British government to strangle them, she thought it her duty to abstain from making that opinion known. By such conduct she thought she had acquired the right to expect of Lord Palmerston in that regard entire reciprocity.[1]

But a more serious question now arose. A large number of Hungarian and Polish refugees, including Kossuth, Dembinski, Bem, Perczel and other leaders in the revolution, escaped into Wallachia and stopped at Orsova, where they were hospitably received by the Turkish authorities. They were subsequently escorted to the fortress of Widdin, to await the Porte's decision as to their ultimate disposition. In the latter part of August the Austrian and Russian ambassadors at Constantinople peremptorily demanded of the Porte the extradition of these refugees, Austria claiming the Hungarians and Russia the Poles. By the treaty between Austria and Turkey

[1] It may be mentioned as a coincidence, that language almost precisely similar to that of Prince Schwartzenberg had been used by the Duke of Sotomayor, the Spanish minister of state, in his then recent dismissal of Sir Henry Bulwer, the British minister at Madrid, for offering, under Palmerston's instructions, some advice as to the manner in which the government of Her Catholic Majesty should be conducted.

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concluded at Belgrade, September 10, 1739, it was provided that neither of the contracting parties should give asylum or shelter to rebels or malcontents, but that each of them should, on the other hand, punish all such persons, as well as all robbers and brigands, whom it might find within its dominions, of whichever party they might be the subjects. By the treaty between Russia and Turkey concluded at Kainardji, July 21, 1774, it was provided that if subjects of either party, having committed a capital crime or rendered themselves guilty of disloyalty or treason, should seek asylum in the territory of the other, they should be neither received nor protected, but should immediately be delivered up or else driven from the country. Such were the stipulations of the treaties. Neither treaty explicitly required the surrender of the fugitives: the treaty with Russia presented the alternative of extradition or expulsion.[1] The ambassadors, however, energetically pressed the demands of their governments, and finally, having urged upon the Porte, but without success, immediate compliance, they broke off diplomatic relations. Bem and fifteen of his Polish companions, appreciating the gravity of the situation, sought to assure themselves of the Porte's protection by embracing the Mohammedan religion.

It is not probable that Austria and Russia at any time contemplated extreme measures to enforce compliance with their demands. Indeed, early in October Prince Schwartzenberg assured Lord Ponsonby that the rupture of diplomatic relations would not be attended on the part of Austria with a worse consequence than the expression of dissatisfaction. Nevertheless, if the Porte, which was without such an assurance, had been left to face the situation alone, the course of our narrative might have been different. But support was not wanting. From the moment the demands for extradition were made, Stratford Canning, seconded by General Aupick, the French minister at Constantinople, labored to place the Porte in an

[1] One of the charges made against Kossuth was the "larceny" of the crown jewels and other royal insignia of Hungary, which disappeared from Arad at the time of his flight and were found at Orsova.

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attitude of firm resistance; and on the first of October it requested through its ambassador at London the moral, and if necessary the material, support of Great Britain. On the 6th, two days before Lord Ponsonby's report of his interview with Prince Schwartzenberg was received, Palmerston informed Canning that Her Majesty's government, having been appealed to by the Porte, could not hesitate to comply with its request. On the same day he instructed Lord Ponsonby, at Vienna, and Lord Bloomfield, at St. Petersburg, to say to the Austrian and Russian governments that, as Turkey was not obliged by treaty to surrender the refugees, she was not called upon to deliver them up. In a passage that has often been quoted Palmerston said:

> If there is one rule which more than another has been observed in modern times by all independent states, it is the rule not to deliver up political refugees, unless the state is bound to do so by the positive obligations of a treaty. . . . The laws of hospitality, the dictates of humanity, the general feelings of mankind, forbid such surrenders; and any independent government which of its own free will were to make such a surrender would be deservedly and universally stigmatized as degraded and dishonored.

His lordship admitted, however, that the Sultan was bound to prevent the refugees from hovering on either the Hungarian or the Transylvanian frontier, and ought to require them either to leave Turkish territory or to take up their residence somewhere in the interior.

At the same time Vice-Admiral Sir William Parker, commander-in-chief of Her Majesty's naval forces at Malta, was ordered with his squadron to the neighborhood of the Dardanelles, in order that he might be able to proceed to Constantinople, if he should be invited to do so by the Sultan through Her Majesty's ambassador at Constantinople. The French government, acting in concert, ordered its naval forces in the Mediterranean to put to sea and, bearing up toward Malta, to enter into communication with the British admiral.

But the warlike aspect of affairs was soon modified. The peaceful assurance given by Prince Schwartzenberg to Lord

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Ponsonby was soon followed by a similar expression on the part of Russia, and a communication was made by the Russian government to the Porte, in which only the expulsion of the refugees was insisted on. The greater part of the Hungarian refugees at Widdin accepted from the Austrian government an offer of amnesty. The more distinguished of their number were not, however, included in the offer, and these, together with the Poles, were removed to Shumla. Subsequently fifty-four of the refugees, among whom was Kossuth, were transferred to Kutaiah, where the Porte engaged to detain them till there should no longer be anything to apprehend from their liberation.

The government of the United States now reappears upon the scene. When Mr. Stiles, the American *chargé d'affaires* at Vienna, reported his attempt in December, 1848, to use his good offices between Austria and Hungary, Mr. Buchanan, who was then secretary of state, expressed a guarded approval. While, he said, the foreign policy of the United States "must ever be governed by the wise maxim not to interfere with the domestic concerns of foreign nations," Mr. Stiles, in endeavoring merely "to open the door of reconciliation between the opposing parties, leaving them to adjust their differences without his intervention," did not appear to have departed from that policy; and if he had acted otherwise, he might have been "charged with a want of humanity." In the course of a few months the language and conduct of the government underwent so considerable a change that it would not have been discreditable to eminent statesmen to suppose that they considered the maxim expressed by Mr. Buchanan to be of doubtful wisdom. Such a supposition, however, would not have been well founded in all, or even in many, cases. If it is an evidence of political skill to find out what the people want and then to go before them in doing it, it must be conceded to be high art to conceal any sense of reluctance under the guise of a bold and enthusiastic leadership. But the clamor of popular excitement is not always to be accepted as the voice of the people. The interest felt in the United States in the Hungarian revo-

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lution doubtless was widespread and sincere. It was greatly intensified when news came of the declaration of Hungarian independence; for, although this declaration left the question of a permanent form of government wholly in abeyance, it was immediately interpreted in the United States as the forerunner of a republic. It was only natural, therefore, that the American people, conscious of their own origin and condition, should be outspoken and demonstrative in their expressions of sympathy with the Hungarian movement. That a considerable proportion of them expected or desired any departure by the government from its established policy of non-intervention, by no means follows. The popular agitation was, however, of so marked and unusual a character as to invest even the wildest suggestion with an apparent political importance.

Early in June, 1849, a Hungarian in the city of New York, who had lived in America for two years, wrote a letter to President Taylor and enclosed with it a printed report of the proceedings at a meeting of "a small number of Hungarians" in that city, at which the writer of the letter had suggested that a petition be addressed to the president, requesting him to consider the propriety of sending a diplomatic representative to the Hungarian government. The writer stated that his countrymen, being perhaps "less experienced" than himself, had not been sufficiently impressed with the urgency of the petition, and he had concluded to present it himself, in the flattering hope that it would be successful. It seems that before the reception of this letter the proceedings in question "had not escaped attention" at Washington.

On the 18th of June Mr. A. Dudley Mann was appointed by the president "special and confidential agent of the United States to Hungary," and was invested with full power to conclude treaties concerning all matters of interest "to both nations." But, as the independence of Hungary had been neither established nor recognized, Mr. Mann was instructed first to proceed to Vienna, and to confer with Mr. Stiles upon the subject of his mission and upon "the best method of accomplishing its objects secretly and with despatch." The principal

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object, Mr. Mann was told, that the president had in view, was "to obtain minute and reliable information in regard to Hungary, in connection with the affairs of adjoining countries," the "probable issue" of the "revolutionary movements," and the chances of "forming commercial arrangements" with Hungary "favorable to the United States." The struggle between Austria and Hungary, and the interference of Russia in the conflict, had, it was said, awakened "the most painful solicitude in the minds of Americans." Without departing from its "established policy of non-interference in the domestic concerns of other nations," the United States desired, if it should appear that Hungary was "able to maintain the independence she had declared," to be "the very first to congratulate her, and to hail with a hearty welcome her entrance into the family of nations." For the present, it was feared that the prospect of such an event was gloomy; and Mr. Mann was instructed that circumstances might be such as to make it safer for him not to proceed to Hungary at all. Of this, he was to be the judge. The "best wishes" of the United States attended Hungary. A policy of "immobility, backed by the bayonet," had opposed the efforts of the "illustrious man," Kossuth, to effect reforms and ameliorate the condition of his countrymen. To the contemplation of American statesmen, Hungary offered "the interesting spectacle of a great people rising superior to the enormous oppression" that had "so long weighed her down." The president, as had been said, desired "to obtain information in regard to Hungary, and her resources and prospects, with a view to an early recognition of her independence, and the formation of commercial relations with her." The president, inspired with "great confidence" in Mr. Mann's opinions, felt "no reluctance in leaving these delicate and important duties almost wholly to his discretion and prudence." He should decide on his own movements, on the proper mode of approaching Kossuth and his confidential advisers, and on the communications which he might deem it proper to make to them on the part of his government. These instructions were signed by Mr. Clayton, as

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secretary of state. Such powers as they conferred on Mr. Mann had never before and have not since been confided to any representative of the United States; and in later years, when civil war was raging in the United States and the national government was protesting against the concession by foreign powers of belligerent rights to the Confederate States, the Austrian government did not fail to recall the mission of Mr. Mann to Hungary.

When Mr. Mann arrived in Vienna, the Hungarian revolution was practically at an end, and he did not tarry in the Austrian capital. Subsequently, however, the fact of his mission as well as the character of his instructions became known, and the Chevalier Hülsemann, the imperial *chargé d'affaires* at Washington, was directed to make a confidential protest against the proceeding. Mr. Hülsemann's representations were met with the explanation that the only object of Mr. Mann's mission was to obtain information by personal observation. With this explanation, though it seemed to give a narrow interpretation to the mission, the Austrian government rested till Mr. Mann's instructions were communicated to Congress. Mr. Hülsemann was then directed, in view of the publication of the document, to enter a formal protest.

When this protest was presented President Taylor was dead, and Mr. Webster had succeeded Mr. Clayton as secretary of state. Mr. Webster's reply is generally known simply as the "Hülsemann Letter."[1] This fact sufficiently attests its popular reception as an overwhelming answer to Mr. Hülsemann's protest. It must, however, be admitted that the conditions were very favorable to such a reception, and it may be fortunate for the reputation of the note that the general impressions concerning it rest on tradition rather than on an accurate knowledge of its contents. Its style is somewhat turgid and labori-

[1] The first draft of this note was made by William Hunter, for many years an honored official in the Department of State. Subsequently, another draft was made at Mr. Webster's request by Edward Everett; and finally Mr. Webster, with Mr. Hunter's and Mr. Everett's drafts before him, cast the note into the form in which it became historical. Curtis, Life of Webster, II, pp. 535–537.

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ous, and it is pervaded by a truculence of expression not in harmony with the usual dignity of Mr. Webster's manner.

Mr. Webster began by observing that, as the publication of Mr. Mann's instructions consisted in a communication of them by the president to the Senate, it was a domestic matter of which foreign powers had no right to take cognizance. On this ground, he said, the president might, perhaps, have declined to make any particular reply to Mr. Hülsemann's protest; but out of proper respect to the Austrian government it had been thought better to answer it at length. Mr. Webster contended that the confidential explanation previously given by Mr. Clayton of the object of Mr. Mann's mission ought to have been deemed "not only admissible, but quite satisfactory," since "nothing whatever" was alleged "to have been done or said" by Mr. Mann "inconsistent with such an object." The government and people of the United States, like other intelligent governments and communities, took a lively interest in the movements and events of the age. This interest, he declared, did not proceed from any desire to depart from a position of neutrality, but from the warm sympathy of the people with movements that appeared to have their origin in those great ideas of responsible and popular government on which the American constitutions were wholly founded. The people of the United States "could not, if they would, conceal their character, their condition or their destiny." The power of the republic was already "spread over a region, one of the richest and most fertile on the globe, and of an extent in comparison with which the possessions of the House of Hapsburg" were "but as a patch on the earth's surface." The United States might, therefore, be pardoned, even by those who professed adherence to the principles of absolute governments, if they entertained an ardent affection for the popular forms of political organization which had so rapidly advanced their own prosperity and happiness. Mr. Webster further argued that if the United States had gone so far as to acknowledge the independence of Hungary, that step, although, as the result had proved, it would have been precipitate, would not have been an

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act against the law of nations, provided the United States took no part in the contest.

When this correspondence was laid before the Senate of the United States, a motion was made to print ten thousand extra copies of it. This motion was opposed by Mr. Clay, and was defeated by a vote of 21 to 18. Mr. Clay said that if a state of the United States had been in revolt, and a European government had sent an agent on such a mission as that of Mr. Mann, it would have created a great deal of feeling. He therefore doubted the soundness of Mr. Webster's contention, that it was a purely domestic transaction. It was published to the world. Its domestic character did not limit its publicity.

Meanwhile, another matter was disposed of in the Senate. In the preceding session Mr. Cass, not intending to allow the Whigs to monopolize public favor, introduced a resolution instructing the committee on foreign relations to inquire into the expediency of suspending diplomatic relations with Austria. Such a step would not, he said, in itself be a cause of offense. But he did not, he declared, "seek to deny or conceal the fact that the motives for the adoption of the measure would be unacceptable and peculiarly obnoxious to the feelings" of Austria. If he were to conceal those motives, he should not, he admitted, "look for that cordial approbation" which he "anticipated from the American people for this first effort to rebuke, by public opinion expressed through an established government, in the name of a great republic, atrocious acts of despotism" committed "under circumstances of audacious contempt for the rights of mankind and the sentiments of the civilized world." In this denunciation Mr. Cass said that he particularly referred to the act of Austria in invoking Russian aid. Seizing upon this statement, Senator Hale of New Hampshire, much to the disgust of Mr. Cass, moved to broaden the scope of the committee's inquiry. He said that he did not want the sympathies of the Senate to be "fenced in." He therefore proposed an amendment to include Russia. He also thought that "the docket ought to be called," and France placed at the bar to answer for her course in Italy, Spain and Algiers.

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Spain and Turkey had likewise been guilty of objectionable acts; and there had lately been certain transactions between the United States and Mexico into which the committee might properly inquire. Mr. Clay ridiculed the resolution, and intimated that Mr. Cass's reference to the anticipated approbation of the American people was not without significance. At the close of the debate no action on the resolution was taken; and when it was called up by Mr. Cass at the next session of the Senate, in December, 1850, Mr. Badger, of North Carolina, inquired whether the statute of limitations would not apply to it. Mr. Cass replied: "Well, sir, I defer to the statute." The resolution was permitted to sleep.

On the 3d of March, 1851, however, the president approved a joint resolution of Congress "for the relief of Louis Kossuth and his associates, exiles from Hungary." This resolution requested the president, "if it [should] be the wish of these exiles to emigrate to the United States, and the will of the Sultan to permit them to leave his dominions," to authorize the employment of one of the public vessels of the United States cruising in the Mediterranean to convey them to America. Steps had already been taken by the president in that direction. As early as January, 1850, Mr. Clayton had instructed the minister of the United States at Constantinople to seek to obtain the liberation of Kossuth and his companions. Lord Palmerston instructed Canning to remind the Porte that the British government could act efficiently in support of the Ottoman Empire only so far as it might be backed by public opinion, and that the position of the Sultan as the jailer of a foreign power would destroy the feeling of sympathy which his prior conduct had aroused. The Sultan finally announced his determination to release all the refugees on the first of the ensuing September. This determination was hastened by the formal tender by the government of the United States a few days before, in conformity with the resolution of Congress, of a vessel to convey Kossuth and his companions to America.

There can be no doubt that the government of the United States contemplated the coming of Kossuth and his companions

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to America in the character of emigrants. This fact appears not only by the resolution of Congress, but also by the instructions of the secretary of the navy, who directed Commodore Morgan, the commander of the squadron of the United States in the Mediterranean, to send the steamer *Mississippi* to Constantinople, as soon as he should be advised that the exiles desired "to seek a home" in the United States, and that the Sultan had consented to their departure. Kossuth, however, in his acceptance of the offer, did not refer to the matter of seeking a home, but merely expressed his impatience to be restored to liberty on board of a vessel and under "the glorious flag" of the United States. The general belief that he had ulterior designs led Commodore Morgan to order Captain Long, the commander of the *Mississippi*, so soon as he had received the exiles on board, to sail for New York, avoiding Naples and Leghorn and touching first at Spezzia, where the commodore had his headquarters. A similar caution was given to Captain Long by Mr. Marsh, the minister of the United States at Constantinople.

On the 10th of September Captain Long received on board of the *Mississippi* from a Turkish steamer, at the Dardanelles, Kossuth and his family, and a miscellaneous collection of fifty-five other persons, some of whom, as Captain Long afterward declared, had never been in Hungary; and, in order to prepare for the voyage to Spezzia, the *Mississippi* proceeded to Smyrna for supplies. When the presence of the vessel at that port became known, Kossuth was promptly visited by a committee of Italian refugees who had formed an association styled the Republican Society of the Orient, and this visit was followed by a commotion on shore of such a character as to induce Captain Long, in compliance with the request of the United States consul, to leave the port.

While this incident served to point the cautions he had already received, Captain Long soon learned from Kossuth himself something of the character of his plans. As the commander of a man-of-war on a peaceful mission, Captain Long deemed it to be his duty not to permit the presence of his ship to become the occasion or the means of hostile demonstrations

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against the friendly governments at whose ports he might happen to call. This duty was imposed by his instructions, by the comity of nations, and by what he understood to be the policy of his government. Kossuth, on the other hand, proclaimed himself to be the leader of a great and impending revolution in Europe; and when he learned that the *Mississippi* would not touch at Genoa and certain other ports which he desired to visit, and that Captain Long wished to avoid a repetition of the incident at Smyrna, he declared that he was "still a prisoner," and that he would decide at Spezzia whether to continue his voyage to America.

On the morning of Sunday, the 21st of September, the *Mississippi* cast anchor in the bay of Spezzia. Kossuth at once dispatched a letter to Commodore Morgan, in which he said that he felt bound to answer the expectations which his own country, and "every other people suffering the same oppression and alike determined to shake it off," attached to his "once more free activity"; and that it would be an offense to the United States if he could entertain the slightest doubt that, once under "the protection of the stars and stripes," he was entirely free to take such course as best suited his aims. He therefore requested an immediate interview with the commodore, in order that he might decide upon the direction and the course of his "next activity." In this interview Kossuth announced his intention to visit England, where he had "highly important business" and "sacred duties" to arrange; and he asked that the *Mississippi*, if she could not carry him to Southampton, might convey him to Gibraltar and there await his return. As it was understood that the principal object of his proposed visit to England was to meet Mazzini, Ledru-Rollin and other revolutionary leaders, and in other ways to further his revolutionary enterprise, and as the season was growing late, Commodore Morgan at first insisted on a continuous voyage to the United States. Kossuth, however, followed up his interview with a rapid succession of letters, and finally proposed that the *Mississippi* should leave him at Marseilles, and then proceed to Gibraltar and there

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await his return from England; and he intimated that if this indulgence should be disapproved by the government of the United States, it would be sanctioned by "the people."

Commodore Morgan, while pointing out the possible obstacles to the proposed journey through France, yielded a desperate assent to Kossuth's last proposition. The commodore's anxiety to speed the parting guest was beginning to outweigh every other consideration; for the incident at Smyrna was quite thrown into the shade by what took place at Spezzia. Boats filled with shouting patriots surrounded the *Mississippi*, and Kossuth added to the excitement by making the people an incendiary speech and promising them to come ashore. Hurried conferences were held between Mr. Kinney, the *chargé d'affaires* of the United States at Turin, and the Sardinian minister for foreign affairs, the result of which was that Kossuth was not permitted to land and that every exertion was made to hasten his departure. On the 23d of September, two days before the *Mississippi* sailed for Marseilles, Commodore Morgan addressed to Mr. Hodge, the consul of the United States at that port, the following letter:

MY DEAR CONSUL: — Such are the necessities and frailties of human events, that, after all, the *Mississippi* will be at Marseilles within a week with Kossuth. The devil seems to possess this gentleman. He contemplates leaving the ship at that point, with his wife and children, for England, and to join her again in twenty days thereafter at Gibraltar. His determined *wilfulness* is *unconquerable*, and the ship will speed to your city within a few days. He is *utterly ungovernable*, and I am compelled to hasten him out of this country. He is like a firebrand. The whole bay around was illuminated last night, bands of music surrounding the steamer, and he always ready for applause. The public authorities were alarmed to utter confusion, and they ran about the streets, having the appearance of somnambulists. Good morning. In great haste, *etc.*

On Friday, the 26th of September, the *Mississippi* arrived at Marseilles, where, to quote the words of Mr. Hodge, there were "eight or ten thousand Roman and other patriots, all very excitable." Mr. Hodge, however, obtained from the well-

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disposed prefect of the city permission for all the refugees to go ashore, and a telegraphic request was sent to Paris to obtain leave for Kossuth to pass through France. It was not long before Kossuth's hotel was surrounded by throngs of people uttering what were described as "unsuitable cries," and on the following day, when, accompanied by the consul, he returned to the *Mississippi*, he was followed to his boat by "some thousands" of shouting and cheering admirers. Meanwhile, the French government refused to permit him to pass through France. This refusal the prefect made known by a letter to Mr. Hodge, which the latter sent to Kossuth. Kossuth immediately communicated this letter to a journal called *Le Peuple*, which Mr. Hodge characterized as a violent "*rouge* paper," together with an address of his own to the "citizens," praising them for their "manifestation of republican sentiments" — a manifestation "honorable for its motives, manly for its resolution, peaceable in its ardor, and as majestic in its calmness as nature, the grand image of God, before the tempest" — and declaring that the "honor of the French nation" was "not in the keeping" of Louis Napoleon, M. Faucher and others, to whom the executive power had been delegated. *Le Peuple* promptly published both the prefect's letter and the address, with copious animadversions, such as the following :

> Indignation fills our hearts and shame reddens our brow. The French democracy must, then, drink the cup of bitterness to its dregs. . . . Léon Faucher has just cast his filthy slime on our French honor. . . . Shame and woe upon us ! French honor sweats through all its pores at this [the prefect's] miserable reply.

When Mr. Hodge was made aware of this proceeding by a remonstrance of the prefect, he addressed an urgent note to Captain Long, complaining that both his official character as consul and his flag had been compromised by it. At this complaint Kossuth took great umbrage. He declared that constitutional governments should not object to publicity, and that he would confidently await the judgment of public opinion in the United States as to the propriety of his conduct. He

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also expressed surprise that when, uncovering his head, he bowed his thanks to the people who came in "a hundred boats floating around the *Mississippi*, singing national songs, offering garlands of laurels" to him, "garlands of immortelles to America, and shouting 'hurrah'" to the United States and to himself, Captain Long walked the deck "without even waving his cap"; and his surprise was, he declared, still heightened, when the captain accosted him in a reproachful manner, and intimated that he (Kossuth) was compromising him by remaining on deck. He would, he said, free the captain from embarrassment by leaving the ship wherever the latter pleased.

Relieved at not having been ordered by the authorities to leave the port, and in the midst of what Mr. Hodge called a "mob valedictory," Captain Long took his departure, expressing the hope that he might "never be caught in such a net again." At Gibraltar, Kossuth disembarked with his family and proceeded to Southampton, with the understanding that, owing to the lateness of the season, the *Mississippi* would continue her voyage to America, while he himself, after arranging his affairs in England, would sail for the United States in a regular packet.

VIII. *A Revolutionary Emissary.*

On the 23d of October, 1851, Kossuth arrived at Southampton, where he was received by the mayor and corporation of the city with an enthusiastic welcome. Standing on English ground, he now displayed before an English-speaking people the marvelous versatility of his oratorical genius. It seems to have been his habit when in prison to devote himself to the acquisition of languages. In this way he is said to have mastered English during his early imprisonment in the fortress of Buda, sufficiently to read the plays of Shakespeare; and during his imprisonment in Turkey he again applied himself to linguistic studies. He could speak with fluency not only his native tongue, but Latin, Slovak, French, German, Italian and English, each of which, as occasion arose, he employed in his

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addresses. Whatever may be our opinion as to his character — and it cannot be said to have been well-balanced — it must be admitted that there was something of uncommon interest in the spectacle of this exile, the representative of a defeated revolution, pleading his prostrate cause before the world, while the people, carried away by his eloquence, applauded even where they could not approve. His picturesque appearance, his misfortunes, the Oriental richness of his imagination, the quaintness and fervor of his speech, the thrilling vibrations of his voice — all combined to awaken the sympathy and enthusiasm of the people.

From Southampton Kossuth proceeded to Winchester; from Winchester he went to London; from London to Birmingham, and from Birmingham to Manchester. In all these places he spoke in his usually eloquent manner, and was received with popular demonstrations in which some men of eminence participated. He refused to meet Lord Palmerston, though an invitation to do so was conveyed to him through Lord Dudley Stuart, one of his most ardent friends and admirers. By the governing classes, Kossuth was regarded with a feeling of distrust — a feeling doubtless enhanced by the consciousness on their part that his mission, so far as it looked to material aid, was visionary. It was evident that he sought something more than sympathy. While he continually protested that all his solicitations were peaceful, he skillfully played on the anti-Russian sentiment which then specially prevailed in England, and it was impossible not to see that the policy he advocated rested in the last analysis on armed intervention.

On the 24th of November Kossuth embarked at Southampton on the American steamer *Humboldt* for the United States. He arrived at New York on the night of the 4th of December, after a stormy passage; and, in spite of the lateness of the hour, the health officer of the port boarded the steamer at quarantine and delivered the following address of welcome, which, though somewhat florid, was pitched in the requisite key:

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ILLUSTRIOUS MAGYAR! NOBLE KOSSUTH! — We greet you from the Western World. Welcome to the land of freedom! Welcome to the Republic of America! which, though yet in its infancy, demonstrates that man is fitted for self-government — which rises like a lighthouse in the skies, as a memento to the lovers of freedom throughout the whole world. You come to us not a stranger. No! From the pine-forests of Maine to the sugar-bottoms of Texas; from the coal-fields of Pennsylvania to the golden mountains of California, — in all that vast region of country, washed on one side by the stormy Atlantic and on the other by the calm Pacific, the name of Kossuth will unlock every heart; and your coming will be the signal for the uprising of eighteen millions of people, to give you a generous, cordial, heart-felt and enthusiastic welcome.

Though suffering from the effects of his voyage, Kossuth was immediately called upon to address numerous delegations; and on the 6th of December a great public reception was given in his honor by the municipal authorities. Public men and private persons, the civil and the military, judges and lawyers, political societies, Sons of Liberty, European democrats, omnibus proprietors, volunteer fire companies and citizens generally, were invited to participate. Proprietors of hotels, the custodians of public buildings and the masters of vessels in port were requested to display their flags.

On this occasion Kossuth, in a public address, cast off all reserve, and in his "official capacity" as the representative of Hungary, made an appeal for aid. Europe was, he declared, on the eve of great events. The course of the government of the United States in regard to his liberation had produced a "conviction throughout the world" that the people had resolved to "throw their weight into the balance" in which "the fate of the European continent was to be weighed." Humble as he was, God, the Almighty, had selected him to represent the cause of humanity before them. His aim was to restore his fatherland to the full enjoyment of its declaration of independence, which, having been lost through the violent invasion of Russian arms, was "fully entitled to be recognized by the people of the United States." What could be opposed to

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this recognition? "The frown of Mr. Hülsemann?" The "anger of that satellite of the Czar, called Francis Joseph, of Austria?" The "immense danger," which some European and American papers threatened, that the American minister at Vienna would be offered his passports, and that Mr. Hülsemann would leave Washington? As to the minister at Vienna, how could the people reconcile their permitting him to stay there with their opinion of the cause of Hungary? As to Mr. Hülsemann, it was not likely that he "would be so ready to leave Washington." He had "extremely well digested the caustic pills which Mr. Webster" had "administered to him so gloriously." Having thus expounded his aims, Kossuth declared that he had not come to the United States for a "happy rest," but to entreat of the people their "generous aid." He had been granted a reception "unparalleled in history," though, in so saying, he was aware that Lafayette was received in a similar manner. But Lafayette had claims to the country's gratitude. He had fought in the ranks for its freedom and independence. "He was," said Kossuth,

> the link of your friendly connection with France — a connection, the results of which were two French fleets of more than thirty-eight men-of-war, and three thousand gallant men who fought side by side with you against Cornwallis before Yorktown; the precious gift of twenty-four thousand muskets; a loan of nineteen millions of dollars; and even the preliminary treaties of your glorious peace negotiated at Paris by your immortal Franklin. I hope the people of the United States . . . will kindly remember these facts; and you, citizens of New York, will yourselves become the Lafayettes of Hungary. . . . I am told that I will have the honor to review your patriotic militia. Oh, God! how my heart throbs at the idea, to see this gallant army enlisted on the side of freedom against despotism; the world would be free, and you the saviors of humanity.

In an address made a few days later to a party of visitors from a distant city, Kossuth entered into an elaborate argument to show that the consideration of distance should not deter the United States in the case of Hungary, any more than in the case of Cuba, from interfering against European invasion.

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Cuba was six days distant from New York, Hungary was eighteen. Was this, he asked, a circumstance to regulate the conduct and the policy of a great people?

During his sojourn in the city of New York Kossuth continued daily to witness manifestations of widespread popular interest. Delegations from the New York bar, from the New England Society, from various political, religious and philanthropic associations, and from cities and towns, far and near, waited upon him. Between the 6th and the 22d of December he received upwards of thirty-five visiting bodies, besides attending numerous dinners and public receptions given in his honor; and the enthusiasm which he aroused by his addresses on these occasions bears ample testimony to the power of his oratory, as well as to the versatility of genius that enabled him in a strange land and in a strange tongue to adapt his discourse to such rapidly shifting conditions.

On the 24th of December Kossuth arrived in Philadelphia. The cold was intense. A deep snow covered the ground, and the Delaware river was frozen so hard that vehicles drawn by horses could cross it on the ice. Kossuth spoke from the balcony in the rear of Independence Hall to a dense crowd that filled the square. Just as he had done at New York, Kossuth took especial pains to assure the people that he did not propose to meddle with their "domestic questions." But it was not quite clear to all how this assurance, whose obvious purpose was to conciliate the favor of Southern statesmen, could be reconciled with his theory of intervention and the grounds on which he placed it. About the time of his arrival in Philadelphia there appeared in a local journal a fictitious letter, purporting to have been written by William B. Reed, the state's attorney, in which Kossuth was apprised that "the intervention or non-intervention sentiments" which he had promulgated in New York were "unsuitable to the region of Pennsylvania," situated as she was "on the borders of several slave-holding States"; that such sentiments were "incendiary in their character and effect," and that they "would be brought to the notice of the grand inquest of the county, for their con-

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sideration and action." Though Mr. Reed immediately disavowed the authorship of this letter, Kossuth at a public dinner sought occasion to say:

> I avail myself of this opportunity to declare once more that I never did or never will do anything which, in the remotest way, could interfere with the matter alluded to, nor with whatever other domestic question of your United Republic, or of a single state of it.

By such expressions, as well as by the anxious haste with which he disavowed and condemned certain anti-slavery sentiments uttered in New York by one of his companions in revolution and in exile, he incurred the denunciation of Garrison, Phillips and other leading Abolitionists. And was not the logic of the situation on the side of the Abolitionists? Liberty, as Kossuth professed it, could not mean one thing in Europe and another thing in America; and his efforts to magnify its importance in Hungary, whilst eagerly pronouncing its denial to a numerous race in the United States to be a "domestic question," led many to doubt the rigor of his principles and the elevation of his motives.

But Kossuth's immediate objective was the national capital, where he hoped to be received in what he called his "official capacity," and to bring the government into line with his policy. For this reason he had shunned "domestic questions." At Washington, however, a disposition was manifested to treat his visit purely as a domestic question. Of all those who shared this inclination, the most conspicuous was Mr. Webster. It is well known that at this time Mr. Webster ardently desired the Whig nomination for the presidency. The nomination of General Taylor by the Whigs in 1848 had been a bitter disappointment to him, and he had declared it to be a nomination "not fit to be made"; and, although no official position could have added to the luster of his just renown, he looked forward in his declining years with a last desperate hope to the Whig convention in 1852 for the coveted distinction. Only a fortnight before Kossuth's arrival in New York a numerous assembly of delegates in Massachusetts issued an ad-

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dress to the people of the United States, in which Mr. Webster's claims to the presidency were formally set forth. As an aspirant for popular favor, who at the same time held the office of secretary of state, Mr. Webster well understood the delicacy of the situation in which the approach of Kossuth placed him. One of the chief stumbling blocks in the way to his final ambition had been the fact that, while he received the homage due to great abilities, he was unable to excite popular enthusiasm for himself; and, in the present critical conjuncture, he did not want to be charged with coldness.

Before the arrival of Kossuth at New York, Mr. Webster was advised, by the reports made to the Department of State of the incidents at Spezzia and Marseilles, that Kossuth was not coming to the United States as an emigrant, but as the representative of popular principles in some as yet undefined sense, and that he expected to appear as the guest of the nation and to invest his visit with public importance. Being thus informed, Mr. Webster, toward the close of November, sent for Senator Foote, who had offered the resolution under which the *Mississippi* was sent to Turkey, and informed him that the president would recommend to Congress in his annual message "to consider in what manner Governor Kossuth and his companions, brought hither by its authority," should "be received and treated." He then requested Mr. Foote to introduce a joint resolution to raise a committee to carry out this recommendation. Mr. Foote did not appear to be anxious to undertake the business, and suggested that, if Congress should raise a joint committee, Mr. Webster himself should deliver the address of welcome. This suggestion Mr. Webster promptly declined, on the ground of his unwillingness to do anything that might compromise the government's "neutral relations"; but he referred to the case of Lafayette, which, he said, might be treated as a precedent, and expressed the opinion that the best mode of receiving Kossuth would be to bring him, without any particular ceremony, to each house of Congress, and have him introduced by the presiding officer with suitable addresses on each side. Mr. Foote still declined to enter into

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the project unless he should be authorized to say that he acted at the instance of the secretary of state, and this point Mr. Webster conceded.

When Congress assembled Mr. Foote immediately brought in a resolution for the appointment of a joint committee to receive Kossuth "on his arrival in the United States," and to tender to him "the hospitalities of the capital." Though Mr. Foote stated that he was acting "in unison with the administration, and somewhat at the instance of the secretary of state," strong opposition to the resolution was manifested on both sides of the Senate. Mr. Foote, in moving the adoption of the resolution, declared: "There has been but one Washington, and there is but one Kossuth — distinguished in war as in peace." When asked to name a single battle in which Kossuth was ever distinguished, he sharply told his interrogator that every one was "bound to know" such facts — a dexterous reply, if not altogether polite. At this point John P. Hale, the great Freesoiler, introduced confusion by announcing his intention to offer an amendment, expressive of the hope that the time might speedily come when the rights of man should be respected by all governments. Quick to suspect a hidden meaning, Mr. Foote said that he hoped that the subject before the Senate would "be discussed in language suited to the ears of statesmen," and declared that the amendment was "demagogical." He also insinuated that Mr. Hale was "seeking notoriety," to which the latter retorted that he was only trying in an humble way to play tail to the kite Mr. Foote had set flying. Mr. Cass now rose and protested against introducing into the discussion any "abstract declaration as to the rights of man"; it was simply throwing the "firebrand of slavery" into the hall. There was, he declared, no excuse for it. The agitation produced by Mr. Hale's announcement was so great that the Senate lost sight of the fact, till the presiding officer recalled it, that the amendment had not in reality been offered and was not before the house. As the result of the debate, however, Mr. Foote withdrew his resolution, and Mr. Seward gave notice of a substitute simply to declare that Congress, in the name of

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the people, extended to Kossuth a cordial welcome to the capital and the country.

Before action could be taken on Mr. Seward's resolution, Kossuth arrived in New York and made his speech at Castle Garden. The grotesquely incongruous spectacle of the nation's guest, then on his way to the capital in his "official capacity," denouncing the heads of friendly governments, heaping ridicule on the minister of one of them, and inciting the people to take up arms against both of them, was not without its effect. Even Mr. Foote was led to admit that the "original expectations" with which he introduced the resolution to bring Kossuth and his associates to the United States "had not been founded upon actual facts"; and a member of the House of Representatives gave notice of a resolution to request the president to send Kossuth copies of certain laws, and to have him arrested, if, after reading them, he continued to make such speeches as that at Castle Garden. Protestations, however, were in vain. Popular excitement, instead of subsiding, was actually rising, and statesmen who had engaged for the voyage could see no reason for abandoning it so long as the wind and tide were with them. Mr. Seward's joint resolution passed the Senate and the House of Representatives by large majorities. A few days later a resolution was adopted by the Senate by a smaller majority, and against strong opposition, to appoint a committee to present Kossuth to that body. A similar resolution was adopted by the House by a vote of 154 to 54, but its opponents delayed its passage till nearly a week after Kossuth's arrival in Washington.

As the time of Kossuth's arrival in that city drew near, Mr. Webster's anxieties increased. On December 23 he wrote privately to a friend: "It requires great caution so to conduct things here, when Mr. Kossuth shall arrive, as to keep clear both of Scylla and Charybdis." Two days later he wrote to another friend: "Kossuth is in Philadelphia; his presence here will be quite embarrassing. I am a good deal at a loss what to do and what to say. I hope I may be able to steer clear of trouble on both sides." On December 30, the day of

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Kossuth's arrival in Washington, Mr. Webster had a case to argue in the supreme court. Writing to President Fillmore early in the day, he said: "He [Kossuth] will be, it is said, immediately surrounded by the Jackson Association, and it is doubtful whether I can see him till after court." In the afternoon, Mr. Webster wrote in a private letter as follows:

> I have called on Kossuth. No exception, certainly, can be taken to his appearance and demeanor as a gentleman; he is handsome enough in person, evidently intellectual and dignified, amiable and graceful in his manners. I shall treat him with all personal and individual respect, but, if he should speak to me of the policy of intervention, I shall "have ears more deaf than adders." I go with him to the President's tomorrow. The President invites him to dine on Saturday.

On December 31, Mr. Webster wrote to the same friend:

> I have now come from the President, where with Governor Seward I have been presenting Kossuth. The President received him with great propriety, and his address was all right. Sympathy, personal respect and kindness, but no departure from our established policy.

Kossuth was both disappointed and chagrined by President Fillmore's address, but it was not the fault of the president. Mr. Fillmore was under the impression that an explicit understanding had been reached with Kossuth, through his secretary, that no allusion would be made in his speech to the subject of intervention; and the president had prepared his reply accordingly. To his surprise, Kossuth made a direct appeal for aid. The president was thus compelled to frame an address on the spur of the moment; and with courtesy and dignity, but with perfect candor, he declared that no sanction, much less material assistance, could be given by the United States to the cause Kossuth advocated. This incident rendered Kossuth's intercourse with the White House somewhat embarrassing. Of the dinner subsequently given in his honor by the president, a person who was present has written the following account:

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During and after dinner the bearing of the guest, in behalf of whom the banquet had been given, was stately and constrained. It was evident that he felt sore and angry. He stood apart after dinner, in a manner which repelled attempts to enter into conversation with him. His whole appearance, alike by his picturesque costume and his attitude and expression, suggested a moody Hamlet, whom neither man nor woman pleased. After a vain attempt to engage him in conversation on Hungarian topics, I asked Mr. Fillmore what had happened to his illustrious guest to have thrown him into such an evidently ungenial state of feeling. He said it was in consequence of what had occurred at his presentation.

For his disappointment at the White House, Kossuth found compensation in his reception by Congress — a compensation, however, that was wholly illusory. On January 5, 1852, he was received by the Senate, and on the 7th by the House of Representatives. In the Senate the proceedings were purely formal, and there were no addresses; in the House the same formality was observed, but Kossuth, after his presentation, briefly expressed his thanks for the cordiality of his reception. On the evening of the 7th of January, he attended a Congressional banquet, at which William R. King, then President of the Senate, assisted by the Speaker of the House of Representatives, presided. Both these gentlemen were averse to the Congressional demonstrations, and participated in them with reluctance. But among the principal speakers at the dinner was Mr. Webster; and it is proper that the explanation he made to President Fillmore of the motives of his attendance, when, only a few hours before the banquet, he decided to be present, should be given as he wrote it:

I have come to the conclusion that it is well for some of us to go to the dinner this evening. The President of the Senate is to preside, and the Speaker of the House is to act as vice-president. It has been said that assurances have been given that nothing shall be said that shall justly be offensive to these gentlemen as anti-intervention men. But what chiefly influences me is, that I learned yesterday that preparations were making for a good deal of an attack upon us, if no member of the administration should pay Kossuth the

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respect of attending the dinner given to him by members of Congress, of all parties, as the nation's guest. I wish the Heads of Departments could see their way clear to go, as I think I shall go myself. In the present state of the country, especially in the interior, where Kossuth is going, I should not like unnecessarily to provoke popular attack.

Kossuth's reception at the banquet was most enthusiastic. It was, indeed, a Kossuth night. All present were "completely entranced by his singularly captivating eloquence." One who was present writes:

> I was assigned a seat next Mr. Seward, and his demonstrations of applause by hands and feet and voice were excessive. The "Hungarian Whirlwind" certainly carried away everything on that occasion, and mingled all parties into one confused mass of admirers prostrate at Kossuth's feet. His speech seemed to me wanting in no element of a consummate masterpiece of eloquence.

On the other hand, Mr. Webster's manner on this occasion has been described as "constrained"; and it is said that "after the high pitch of enthusiasm to which the audience had been wrought up," his speech "fell rather heavily upon them, and did not give that measure of encomium of M. Kossuth which their feelings at the moment craved." The same authority, a personal friend of Mr. Webster, tells us that "his recent experience in connection with M. Kossuth, while it had not diminished his admiration of his brilliant ability, had "convinced him that, though matchless as an orator, he was no statesman." For the most part, Mr. Webster's speech was colorless, but he closed it with the declaration that the first prayer for Hungary should be that she might become "independent of all foreign powers." He did not profess to understand "the social relations and connections of races and of twenty other things" that might affect "the public institutions of Hungary." All he could say was that she could regulate these matters for herself "infinitely better" than they could "be regulated for her by Austria; and, therefore," said Mr. Webster, "I limit my

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aspirations for Hungary, for the present, to that single and simple point — Hungarian independence, Hungarian self-government, Hungarian control of Hungarian destinies."

On the evening on which Mr. Webster made this speech, there was another statesman in Washington, whose name will ever be associated with his in the great triumvirate — Henry Clay, who refused to countenance an agitation which he knew to be harmless only so far as it was hopeless. Kossuth more than once expressed a desire to meet him, and Mr. Clay, though in feeble health, at length granted him an interview. It is said that on a certain occasion, after receiving a party of American statesmen, of whom Mr. Clay was one, Lord Castlereagh, while speaking appreciatively of all his visitors, said he "liked that man from Kentucky best." The charm and cordiality of Mr. Clay's manner never forsook him, and he received Kossuth with the utmost kindness. But his candor was equal to his kindness; and it may be said that there was kindness in his candor. "For the sake of my country," said Mr. Clay, addressing Kossuth,

> you must allow me to protest against the policy you propose to her. Waiving the grave and momentous question of the right of one nation to assume the executive power among nations, for the enforcement of international law, or of the right of the United States to dictate to Russia the character of her relations with the nations around her, let us come at once to the practical consideration of the matter. You tell us yourself, with great truth and propriety, that mere sympathy, or the expression of sympathy, cannot advance your purposes. You require material aid. . . . Well, sir, suppose that war should be the issue of the course you propose to us, could we then effect anything for you, ourselves, or the cause of liberty? To transport men and arms across the ocean in sufficient numbers and quantities to be effective against Russia and Austria, would be impossible. . . . Thus, sir, after effecting nothing in such a war, after abandoning our ancient policy of amity and non-intervention in the affairs of other nations, and thus justifying them in abandoning the terms of forbearance and non-interference which they have hitherto preserved toward us; after the downfall, perhaps, of the friends of liberal institutions in Europe: her despots, imitating and provoked by our

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fatal example, may turn upon us in the hour of weakness and exhaustion, and with an almost equally irresistible force of reason and of arms, they may say to us: "You have set us the example; you have quit your own to stand on foreign ground; you have abandoned the policy you professed in the day of your weakness, to interfere in the affairs of the people upon this continent, in behalf of those principles, the supremacy of which you say is necessary to your prosperity, to your existence. We, in our turn, believing that your anarchical doctrines are destructive of, and that monarchical principles are essential to, the peace, security and happiness of our subjects, will obliterate the bed which has nourished such noxious weeds; we will crush you, as the propagandists of doctrines so destructive of the peace and good order of the world." The indomitable spirit of our people might and would be equal to the emergency, and we might remain unsubdued, even by so tremendous a combination, but the consequences to us would be terrible enough. You must allow me, sir, to speak thus freely, as I feel deeply, though my opinion may be of but little import, as the expression of a dying man. . . . By the policy to which we have adhered since the days of Washington, we have prospered beyond precedent; we have done more for the cause of liberty in the world than arms could effect; we have shown to other nations the way to greatness and happiness. . . . Far better is it for ourselves, for Hungary and for the cause of liberty, that, adhering to our wise pacific system and avoiding the distant wars of Europe, we should keep our lamp burning brightly on this western shore, as a light to all nations, than to hazard its utter extinction, amid the ruins of fallen or falling republics in Europe.

When Kossuth left Washington on the 12th of January, he addressed to President Fillmore a farewell letter, with a request that it might be communicated to Congress. To this request the president, through Mr. Webster, declined to accede, at the same time suggesting that the letter might be sent to the presiding officers of the two houses. On this suggestion Kossuth subsequently acted, but his letter, which dwelt overmuch on the honors shown him, and expressed the hope that the United States would pronounce in favor of the law of nations and of international rights and duties, was coldly received. A motion to print it was carried in the Senate by only one vote, and the arguments in support of the motion

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were almost exclusively confined to considerations of courtesy. One Senator roundly denounced the "Kossuth humbug," and declared that it could not again be "galvanized into life." Another spoke of the reception by the Senate as a "dumb show." Another yet, paraphrasing the words of Falstaff, said that Kossuth not only had much "talk" in himself, but was the cause of talk in other men. Indeed, the sudden collapse of Kossuth enthusiasm in high places, after his departure from the capital, would have been inexplicable, if the open opponents of his policy of intervention had found any one to meet them on that ground.

There is only one incident of Kossuth's visit to the national capital that remains to be narrated. However well the Chevalier Hülsemann may have "digested the caustic pills which Mr. Webster administered to him so gloriously," it was his somewhat ironical misfortune to figure from first to last as the principal victim of the Hungarian excitement. Some time after his diplomatic physicking he made a trip to Havana, and on his passage through New Orleans he was subjected to what he described as "demonstrations of an exceedingly disagreeable character." Of this circumstance, as well as of the fact that his interviews with the Department of State were derisively commented upon and burlesqued in certain newspapers, he sought occasion, after his return to Washington, to complain to Mr. Webster. Mr. Webster, deeming the language of his complaint to be offensive, informed him that thenceforth his intercourse with the department must be exclusively in writing. After Kossuth's reception in New York Mr. Hülsemann accordingly addressed to Mr. Webster a note, in which he complained of the military honors paid to Kossuth by the federal authorities. To this note Mr. Webster did not reply; and Mr. Hülsemann's perplexities were afterwards increased by Mr. Webster's speech at the Kossuth banquet. Finding himself apparently excommunicated by the Department of State, Mr. Hülsemann now resolved to try a direct appeal to the president; and, although he was only a *chargé d'affaires ad interim*, and not entitled to claim an audience of the head of

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the government, the president not only received him but assured him of his desire to maintain friendly relations between the United States and Austria. But as this assurance was not followed by any official communication, and as no step was taken by Mr. Webster towards a reconciliation, Mr. Hülsemann in the latter part of April gave notice that his government could not allow him to remain in Washington any longer, "to continue an official intercourse with the principal promoters of the much-to-be-lamented Kossuth episode." At the same time he tendered his "respectful thanks to the president for his invariably obliging conduct" towards him, and stated that the consul-general of Austria in New York would "continue to perform his functions until further orders."

When this note was received at the Department of State Mr. Webster was absent, and by his direction it was formally answered by the acting-secretary. On his return, however, he addressed a communication on the subject to Mr. McCurdy, the *chargé d'affaires* of the United States at Vienna, and instructed him that he was at liberty to read it to the Austrian minister for foreign affairs. In this paper Mr. Webster said it was obvious from the tenor of Mr. Hülsemann's recent communication that, notwithstanding his long residence in the United States, he was quite uninformed as to the character of American institutions, and as to "the responsibilities of public men in the United States for their acts or their sentiments in a private capacity in regard to foreign powers." Mr. Hülsemann had yet to learn that no foreign government or its representative could "take just offense at anything which an officer" of the United States might "say in his private capacity." "Official communications only," said Mr. Webster, were "to be regarded as indicating the sentiments and views of the government of the United States"; and, if those communications were of a "friendly character," the foreign government had no right or reason to infer that there was any insincerity in them, or "to point to other matters as showing the real sentiments of the government."

Chief-Justice Marshall once said of a great argument that its

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only defect was its "want of verisimilitude." Mr. Webster's letters have already shown us that their writer was not unconscious of the inconveniences of his position at the Kossuth banquet. But if the secretary of state could, without resigning his office, so completely resume his private capacity that a foreign government could not even infer anything from what he said about it in a public speech, it is not clear why Mr. Webster's course, instead of being beset, as he said, by a Scylla and a Charybdis, should not have been attended with "all that poets feign of bliss and joy." In the same way a dose of the "caustic pills" administered to Mr. Hülsemann might have been administered to his master, or to any other foreign sovereign, with equal impunity, and with even greater glory.

But the fatal defect in Mr. Webster's position was the fact that Kossuth did not come to Washington in a "private capacity," but as the "representative of Hungary"; and Mr. Webster, being apprised of this fact, sought an opportunity publicly to declare in his presence a wish that the revolution might yet be successful. If with this declaration he had coupled a public disclaimer of any purpose to endorse the policy of intervention which Kossuth proposed, his position would have been vastly stronger. Such a disclaimer, however, he did not make; and Mr. Hülsemann was hardly censurable, especially as his note remained unanswered, in assuming that what the secretary of state declared publicly, though in "a private capacity," might in the end be confirmed by his official communications, if it was not already reflected in his official acts.

In the following autumn Mr. Webster died at Marshfield. Perhaps it may be said that he had in one respect made Mr. Hülsemann his debtor. He had, indeed, treated him somewhat inconsiderately. He had manifested towards him an irritability, excited by perplexities, which it had been better to avoid. But he had in a manner associated Hülsemann, though ungraciously, with his own imperishable name. When Edward Everett, after the death of Mr. Webster, became secretary of state, he soon found an opportunity to convey to the

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Austrian government a graceful intimation that it would be agreeable to the president if Mr. Hülsemann should return to his post. In due time Mr. Hülsemann resumed his official functions, and he thereafter continued in the discharge of them for a period of more than twelve years.

After his departure from Washington, Kossuth made an excursion through the West and South, and afterward through the North and East. He spoke at Harrisburgh, Pittsburgh, Cleveland, Columbus, Cincinnati, Indianapolis, Louisville, Memphis, Jackson, Mobile, St. Louis, Buffalo, Syracuse, Utica, Albany, New Haven, Springfield, Worcester, Lowell, Salem, Lexington, Concord, Plymouth, Faneuil Hall and Bunker Hill. He addressed the Senate of Maryland and the House of Representatives of Pennsylvania, and he was banqueted by the legislature of Massachusetts. Subsequently he returned to New York, and, after remaining there for the most part quietly for two months, he sailed for England. From the gifts of admirers and the sale of "Hungarian bonds" he had realized the sum of about ninety thousand dollars. This was the only substantial aid that he derived from his visit. His departure was scarcely noticed. The popular excitement concerning him died out with a suddenness proportionate to its extravagance. His triumphal progress, however, left its traces in the popular fashions. For a time "Kossuth hats" were much in request. But far more enduring was the encouragement he gave to the wearing of beards. As Jonas Hanway opened the way to the use of umbrellas in England, so Kossuth by his own example taught the men of the United States that the wearing of beards was not unmanly.

In England Kossuth joined Mazzini and Ledru-Rollin and entered into their revolutionary conspiracies. In 1853, in consequence of a local uprising produced in Hungary, his mother and sisters were banished from the country, and several persons were executed. In 1854 he sent a vehement protest to the United States against the refusal of the Senate to confirm in office a person who, after proceeding to London as consul of the United States, became notoriously implicated in attempts

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planned in that city to start a revolution on the continent. The funds Kossuth collected in the United States were soon absorbed in his revolutionary enterprises, and he made a tour of England and Scotland, delivering lectures. In 1859 his hopes were revived by the preparations of France and Italy for war against Austria, and he entered actively into the plans of his former aversion, Louis Napoleon, with reference to that object. His hopes, however, like those of many others, were dashed by the peace of Villafranca.

When Déak and Andrássy succeeded in bringing about the dual system under which the Austrian and Hungarian crowns are now united, Kossuth exhorted the Hungarians to repudiate it. In 1867 he refused to accept an election as deputy to the Hungarian Diet for Waitzen, being determined never to recognize the House of Hapsburg-Lorraine as the possessor of the Hungarian crown. Subsequently he lost his Hungarian citizenship in consequence of a law denationalizing persons who absented themselves from the country for a period of ten years. To the end he continued to protest against the abandonment by the Hungarians of the cause of national independence. But the outbursts of feeling which took place in Hungary on the occasion of his death, and the remarkable scenes that attended his interment in his native soil, have revealed the depth of his hold on the affections of the people, as well as the permanence of the fascination that enabled him in the days of his power to enlist his countrymen in the cause of independence.

Neither by origin nor by position was Kossuth destined to play a leading part in the affairs of Hungary. He had neither wealth nor rank to aid him, but he embodied, as no one else did, the national impulses of the time, and he expressed them with an eloquence that was irresistible. His weapon was oratory. To military genius he could not lay claim. The conduct of military operations he left to his generals. He could inspire the people to take up arms, but he could not lead them in the field. He influenced the army as citizens, not as soldiers. He led no charges and conducted no cam-

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paigns. When only a last desperate hope remained, he resigned his authority into the hands of a military dictator.

As a statesman Kossuth's limitations resulted from his temperament. He was a revolutionist. The qualities that made him the orator that he was, incapacitated him for statesmanship. To say that he would not recognize the truth that

> Who does the best his circumstance allows
> Does well, acts nobly,

would, perhaps, be unjust to him. It is probable that he could not grasp it. Under the dual system planned by Déak Hungary substantially secured the full measure of constitutional, legislative and administrative autonomy which Kossuth himself originally sought. But, while his old associate in the Revolution, Andrássy, first as prime minister of Hungary and afterwards as imperial minister for foreign affairs, was not only gaining for Hungary the liberties she desired, but enabling her to wield a paramount influence in imperial councils and thus to affect the destinies of Europe, Kossuth wasted his days in vain regrets not untinged with resentment. It was because of this impracticable temper that the man who, as the incomparable orator of the Hungarian Revolution, fascinated the imagination of the civilized world, came to devote himself to the fantastic pursuit of a delusive project, and, after having signally failed both as an advocate and as a conspirator to accomplish his ends, preferred to die in self-imposed exile.

JOHN BASSETT MOORE.

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A TRIAD OF POLITICAL CONCEPTIONS: STATE, SOVEREIGN, GOVERNMENT.

STATE, sovereign, government — these are words that meet the student of politics and jurisprudence at every turn. As scientific names it is highly important that they should have determinate meanings; but unfortunately they are employed by different authors, and sometimes even by the same author, in various senses. Amos mentions four discrepant connotations currently given to the term state.[1] According to Rousseau, state and sovereign denote respectively the passive and the active aspect of the body politic.[2] Bentham makes the sovereign parcel of the government. Austin uses state and sovereign interchangeably. In Holland's view, the sovereign is but one of the two parts into which the state is divisible. Some writers insist on the necessity of carefully discriminating government from state and sovereign.[3] Others take government as a synonym of state.[4] Indeed, examples of the confusion complained of might be multiplied indefinitely. No one, then, can deem it unprofitable to inquire what object of thought each of these capital and hard-worked terms most commodiously signifies, what the essential characters of the objects thus signified are, and precisely how these objects are related to one another.

In the following pages I shall try to contribute something by way of answer to these questions.

[1] The Science of Law, p. 118.

[2] See Rousseau, Contrat Social, l. i, ch. vi; Bentham, Principles of Morals, *etc.*, ch. xvi, § 17; Austin, Jurisprudence, vol. i, p. 249, n. (p); Holland, Jurisprudence (1st ed.), p. 38.

[3] Rousseau, Contrat Social, l. iii, ch. i; Pomeroy, Constitutional Law, § 37, p. 28; Burgess, Political Science and Comparative Constitutional Law, I. 68.

[4] Hearn, Legal Duties and Rights, ch. i, § 3.

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I. *The State.*

I. An adequate analysis of the state in what may be called its outward or mechanical, as distinguished from its inward or organic, aspect requires us to notice at least the following topics, namely, its members, its territory, its political organization and its independence.

1. A state is a large aggregation of families, men, women and children.

The harmonization of vast population with constitutional freedom, which resulted from that wonderful Teutonic invention, representative government, was, of course, never dreamed of by Aristotle, the path-breaker in political science. Seeking to determine the ideal conditions of the Hellenic city-state, he says that a πόλις should have no more citizens than might be assembled in its market-place and taken in at a single view by the magistrate's eye.[1] He recognizes, however, that there is a minimum limit also to the number that can constitute a true state. Too small a group both would lack material for the varied coöperation necessary to the "good life" which the state should realize,[2] and would be fatally wanting in ability to resist the aggression of external foes.

In consonance with this, Hobbes mentions as the first essential of a commonwealth a "multitude sufficient to confide in for our security . . . not determined by any certain number, but by comparison with the enemy we fear": and it is "then sufficient when the odds of the enemy is not of so visible and conspicuous moment, to determine the event of war, as to move him to attempt."[3]

In criticising this passage, Austin remarks that if the capacity successfully to withstand every imaginable hostile combination be an indispensable attribute of an independent political

[1] Politics, bk. vii, chs. iv, v; Eth. Nic. IX, 103.

[2] ἡ πόλις . . . γενομένη μὲν τοῦ ζῆν ἕνεκεν, οὖσα δὲ τοῦ εὖ ζῆν. Politics, bk. vii. ch. iv.

[3] Leviathan, ch. xvii. To the same effect, Rousseau, Contrat Social, l. ii, ch. ix, *ad fin.* But *cf. Id.*, l. iii, ch. xv, *ad fin.* and note.

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society, neither past nor present furnishes an example of one, since no community ever could possess might enough to stand against the world in arms.[1] The truth of this is obvious; but it may be freely conceded without any abandonment of the position that a certain power of numbers is inseparable from the conception of the state. A society which is so small numerically as to be practically defenseless, and which exercises autonomy purely by the sufferance of its neighbors or merely as a temporary consequence of their mutual fears and jealousies, is at best a kind of toy — a fragile political curiosity which only chance preserves against the spirit of conquest and "the general hatred of the small-state system."[2]

2. A second requisite of the state is a determinate territory, the home of the members.

It is scarcely necessary to recall how deeply Greeks and Latins blended their notions of civil society with the idea of the πόλις or *urbs*, whose area was the focus of their collective life, the abode of their great tutelary gods, the scene of their keenest pleasures, the only place where they could exercise and enjoy the full privileges of citizenship. In no other conception of polity does the element of definite locality loom so conspicuously as in this of the city-state. Among the Teutons, the architects *par excellence* of the nation-state, a clear recognition of community of country as a prime force in political coalescence was but tardily developed. For a considerable period after they had won for themselves seats within the bounds of the Roman empire

> they appear to have retained the traditions which they brought with them from the forest and the steppe, and to have still been in their own view a patriarchal society, a nomad horde, merely encamping for the time upon the soil which afforded them sustenance.[3]

Their sense of political unity was mainly personal in its source; it was derived in larger measure from their common

[1] Jurisprudence, vol. i, p. 241.

[2] Bluntschli, The Theory of the State (trans. 1892), pp. 239, 16; Sidgwick, Elements of Politics, pp. 209, 210.

[3] Maine, Ancient Law (3d Am. ed.), ch. iv, p. 100.

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loyalty to the chieftain or king whom they obeyed than from the idea of the region they inhabited together. With the advent of the tenth century, however, feudalism appeared, and throughout nearly all western Europe the authority of rulers and the correlative obligations of subjects were, both in theory and in fact, founded upon the basis of graduated proprietary interests in certain territorial areas.[1] No doubt the prevalence of this system, at once a form of civil polity and a mode of tenure of land, contributed to establish a fixed geographical boundary among the chief ingredients of the conception of the state.[2]

The conjunction in thought between a political society and its territory has now become so close that, as Sidgwick points out,

> the two notions almost blend, and the same words are used indifferently to express either: thus we sometimes mean by "a state" the territory of a political community, and we sometimes mean by a "country" the political community inhabiting it. We speak of crossing the boundaries of a "state" and we say that a "country" has made up its mind.[3]

3. Although Aristotle asserts that in every state there must be a supreme power placed in the hands of one person, of a few or of many, and proceeds to discuss the question where it ought to be lodged;[4] nevertheless, it was reserved to the Frenchman, Bodin, writing in the latter half of the sixteenth century, first adequately to point out that the political organization of the state consists in the existence between its members of an all-comprehending relation of sovereign and subject.[5] From that time to the present, the leading conception of the science of politics has been drawn from the fact of

[1] "Land has become the sacramental tie of all public relations." Stubbs, Const. Hist., vol. i, p. 167.

[2] Maine, Ancient Law (3d Am. ed.), p. 102.

[3] Elements of Politics, pp. 213, 219, 220.

[4] Politics, bk. iii, chs. 7, 10, 11.

[5] Bodin's De la République was published in Paris in 1576, his Latin version of it ten years later. See Crane and Moses, Politics, pp. 41–43; Pollock, Hist. of the Science of Politics, pp. 46–53.

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sovereignty — "a power," says Bodin, "supreme over citizens and subjects, itself not bound by the laws." Around this fact the thought of publicists and moralists has unweariedly circled, and out of the efforts to set forth its cause and furnish its ethical justification developed the once formidable dogma of the divine right of kings and the celebrated fiction of the social compact.

Every independent political society exhibits a determinate ruling part to whose will, when expressed by some sufficient sign, the bulk of the members of such society are habitually obedient. Such general obedience, whatever its other sources, is greatly due to the fact that the ruling part, through its agents, inflicts punishment upon those who set themselves against its commands — punishment that may extend not only to deprivation of property, but to corporal pain and even to death.

Supporters of the most antagonistic theories are able to agree in placing sovereignty at the foundation of the state.[1] Thus Hobbes asserts that men escape from anarchy into the protection of civil order by erecting "a visible power to keep them in awe."[2] "And this," says Locke, "puts men out of a state of nature into that of a commonwealth, by setting up a judge on earth with authority to determine all the controversies and redress the injuries that may happen to any member of the commonwealth, which judge is the legislative or magistrates appointed by it."[3] So also Kant describes the state as a union of men under one will that determines by law what shall be recognized as belonging to each subject, and secures this to him by a competent power distinct from his own personality.[4] Similarly, Lasson defines the state as "a human community which possesses an organized highest authority as the supreme source of all compulsion."[5] And Bentham writes:

[1] Pollock, Hist. of the Science of Politics, p. 47.
[2] Leviathan, ch. xvii.
[3] Treatises on Govt., bk. ii, ch. vii, § 89.
[4] Philosophy of Law (Hastie's trans.), pp. 161–164.
[5] Rechtsphilosophie, p. 383.

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When a number of persons (whom we may style subjects) are supposed to be in the habit of paying obedience to a person or an assemblage of persons, of a known and certain description (whom we may call governor or governors), such persons altogether (subjects and governors) are said to be in a state of political society.[1]

We may, then, accept the doctrine that the political organization of the state is manifested in the permanent constitution of two organs that together include all its members, and that are characterized respectively by the functions of issuing commands and rendering obedience.[2]

4. Austin, in commenting upon the above-quoted passage from Bentham, observes that, considered as a definition of the state, it is defective in an important particular, namely, in omitting to mention the essential quality of independence.[3] The presence of this note or mark, which Bentham neglected, is what especially differentiates a state proper from a mere limb of a state, such as a canton, a colony or a province, and entitles a political society to hold a place within "the family of nations."[4]

A civil community lacks the quality of independence when the ruling organ therein enters into the ruling organ of another civil community that embraces the first; or, since the relation just described necessarily involves the habitual obedience of the ruling organ in the smaller community to a superior part of the compound ruling organ of the greater, we may say, as Austin does, that a political society is non-independent when

[1] Fragment on Government, ch. i, § 10.

[2] See Kant, Phil. of Law (Hastie's trans.), p. 169; Puchta, Outlines of Jurisprudence (Hastie's trans.), p. 79.

[3] Jurisprudence, vol. i, p. 240. The "independence" of the state is sometimes called its "external sovereignty," but inaccurately, because "sovereignty" imports the relation of superior and inferior, while normal states are under the "scepter of nature" only, and are theoretically equal. See Holland, Jurisprudence (1st ed.), p. 39; Maine, Ancient Law (3d Am. ed.), ch. iv, pp. 96–97; Clark, Practical Jurisprudence, p. 175.

[4] Holland, Jurisprudence (1st ed.), p. 39. According to its technical meaning in international law, this term includes only the Christian nations of Europe and their offshoots in America, with the addition of the Ottoman Empire. *Op. cit.*, p. 267.

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the ruling organ therein is habitually obedient to a determinate political superior. Thus the British colony of Victoria is not a person known to international law, because it is not independent: and it is not independent, because its internal ruling power is a constituent parcel of that vast complex, the ruling power or sovereign of the entire British Empire; or (adopting Austin's criterion) because its internal ruling power is constantly limited in the exercise of its functions by the commands of the supreme part of the ruling power or sovereign of the whole British Empire, namely, the sovereign power of Great Britain.[1]

It is evident that the independence essential to the state is entirely consistent with the obedience yielded by civilized nations to the rules of international law; for these rules do not issue from a determinate political superior. They are laws of public opinion, not the commands of the sovereign power of a *magna civitas* or universal empire.[2] A political society whose ruling organ is ordinarily obliged by no other commands than those of public opinion has all the independence which a political society can possibly enjoy.

II. Having exhibited the state in its outward or mechanical aspect, as a numerous body of human beings permanently united by common inhabitation of a definite territory and by the establishment of an all-comprehending relation of sovereign and subject, and corporately possessing external independence, it now remains for us briefly to consider the state in its inward or organic aspect.

"Obedience," says Burke, "is what makes a government, and not the name by which it is called";[3] and to this we may assent if by "government" is meant simply an independent political society. To constitute a true state, however, something must be superadded. For this there is required an

[1] On this subject, see Dicey, Law of the Constitution (1st ed.), pp. 95–109.

[2] "The development of international law, or the institution of a universal state (*Weltreich*), might organize the legal responsibility of nations. At present, this is only an ideal, which the future may perhaps realize." Bluntschli, The Theory of the State (trans. 1892), p. 509.

[3] Speech on Conciliation with America.

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obedience exacted with a regard to justice and the general happiness, and rendered in a corresponding spirit of spontaneous coöperation. The force of the sovereign must be directed according to right, and the observance of subjects transformed into duty.

As already shown, the institution of sovereignty is a condition absolutely essential to the appearance of the state. With its accomplishment civilization makes a prodigious stride: hordes crystallize into polities and anarchy gives place to regimen.[1] This is an achievement so vast that it seems to have well-nigh exhausted the political resources of the great bulk of the human race — the non-historical peoples of the world.[2] Some observers have been so impressed by its magnitude and significance that they have ignored the goal beyond. So Hobbes writes bare sovereignty as the last word in the philosophy of the commonwealth. For him, mere political organization is a consummate result. That his theory delivered men over to despotism, he deemed of no moment, since it sufficed to rescue them from the "perpetual war" of "every one against every one."

We by no means attain to the full conception of the state by uniting to its other elements above discussed, the ingredient of political organization. Still another constituent must be brought in — one whose rejection would compel us to deny that there is anything radically distinctive in the peculiar product of the political genius of the historical nations, to include Asiatic autocracies[3] and the barbarous monarchies of Africa under the category of the state, and to rank slaves as citizens. This final constituent is reached through a just apprehension of the purpose or end of the state, as contradistinguished from the independent political society.

[1] "It took thousands of years to accomplish it and exhausted the spiritual powers of all Asia in its accomplishment." Burgess, Political Science, *etc.*, vol. i, p. 60.

[2] As to "stationary and progressive societies," see Maine, Ancient Law (3d. Am. ed.), pp. 21, 23. For definition of an "historical" people, see Lavisse, Political Hist. of Europe (trans. by Gross), pp. 1, 2.

[3] "Asia has produced no real states." Burgess, *op. cit.*, vol. i, p. 60. See also Hearn, Legal Duties and Rights, p. 20.

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Wherever sovereignty is chiefly a means of exploiting servient masses and is consequently for the most part founded upon supineness, habit and fear, there the state does not exist.[1] The state emerges when political organization becomes primarily an instrument for preserving the vital interests of its members, for securing their lives and liberties and fencing their great institutions of family, of property and of contract, and when, as a result, the bonds of civil cohesion upon which despotism must rely are supplemented by the nobler ties of patriotism, reason and active consent. Then the commands of the sovereign power assume a likeness to that ideal law which an ancient sophist figured as "an agreement and pledge between the citizens of their intending to do justice to each other,"[2] and which a modern philosopher describes as "the maintainer of the conditions to complete life in the associated state."[3] The purpose or end, then, apart from which we cannot adequately conceive of the state, is, in the words of Dante, "liberty, to wit, that men may live for their own sake"; or according to Lord Bacon's expression, "*ut cives feliciter degant.*"[4] "For citizens," continues Dante, "are not for the sake of the consuls, nor a nation for the king: but contrariwise, the consuls are for the sake of the citizens, the king for the sake of the nation."[5]

In the rise and development of the state we see, on the one hand, the domination of the governing part of political society growing into harmony with ethical requirements, and, on the other, the submission of the governed more and more acquiring the nature of voluntary coöperation for the general advantage; the relation of sovereign and subject is gradually transformed by the spirit of solidarity.

[1] Governments, says Aristotle, that have in view only the good of the rulers, "are tyranny over slaves; whereas a city is a community of freemen." Politics, bk. iii, ch. 6, *ad fin.* *Cf.* Locke, Treatise on Govt., bk. ii, §§ 90–94; Rousseau, Contrat Social, l. i. ch. 5.

[2] Lycophron, cited by Aristotle, Politics, bk. iii, ch. 9.

[3] Spencer, Political Institutions, p. 537, § 535.

[4] Obs. de Princ. Juris, § II.

[5] De Monarchia, cited by Pollock, Hist. of the Science of Politics, p. 37. See Bryce, The Holy Roman Empire, pp. 265–267.

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With genuine insight, Schopenhauer interprets this metamorphosis, considered in an aspect purely subjective and psychological, as the work of reason, that mounts from the one-sided and personal to the catholic point of view, whence it discerns the fundamental unity of man and recognizes that, in the total of humanity, the pleasure of inflicting wrong is always defeated and swallowed up by the suffering which is the necessary correlative thereof. Through this knowledge come the renunciation of injustice and the substitution for individualistic egoism of a collective or corporate "egoism of all."[1] So far as morally defensible, the state is an embodiment of this rationally transfigured or universalized egoism and exists to make it effective; and hence it may be said that in the idea, as opposed to the concept, of the state, there is presented the complete ascendency of the universal over the particular in man.[2]

II. *The Sovereign.*

In the course of the foregoing analysis it was asserted that the political organization of the state is manifested in the permanent constitution of two organs that together include all its members, and that are characterized respectively by the functions of issuing commands and rendering obedience. The first of these organs is the sovereign;[3] the second embodies the subjects. Austin[4] and Rousseau[5] have made us familiar with the truth that when the sovereign is of plural structure, *i.e.*, "an aristocracy in the generic meaning," some of the members

[1] The World as Will and Idea (trans. by Haldane and Kemp), bk. iv, § 62, pp. 442, 443, 445, 451, 457.

[2] "By an Idea," says Coleridge, "I mean that conception of a thing which is given by the knowledge of its ultimate aim." Church and State, p. 10.

[3] Sovereign is derived from the late Latin *superanus*. "*Sovran* appears to have come to our poets independently through the Italian *sovrano*." Clark, Practical Juris., p. 160, n. 11. "La Souveraineté, mot vague (né du latin du moyen-âge, de *superioritas*, *superanus*) et se prêtant facilement à des acceptions arbitraires. Cependant selon son véritable sens, le mot désigne un pouvoir qui décide dans son domaine en dernière instance, sans être soumis à cet égard à une autorité supérieure." Ahrens, Droit Naturel (8th ed.), t. ii, p. 362, § 110.

[4] Juris., vol. i, p. 244.

[5] Contrat Social., l. i, chap. vi.

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of the state enter into the composition of both these organs, being "citoyens, comme participants à l'autorité souveraine, et sujets, comme soumis æux lois de l'état."

The sovereign into whose nature we are about to examine is the "political," not the so-called "legal" sovereign of the state. The legal sovereign is the formulator and announcer of the supreme commands that spring from the will of the political sovereign, and constitutes part of the government, as that will be hereafter defined. It is essentially a mandatory clothed with a measure of discretional authority, while the political sovereign is the master. In idea, the two are clearly separable; but in fact, they occur in more or less intimate coalescence. Thus, in Great Britain the legal sovereign is the queen, lords and House of Commons; and the political sovereign consists of the lords and the electors of the House of Commons.[1] At Athens, during its golden age of direct democracy, the legal and the political sovereign were virtually merged in a single assembly.[2] The *Grand Monarque* was not, indeed, as he declared himself to be, the state; but he was both legal and political sovereign of the state.

The political sovereign of the state is that determinate person or number of persons therein, who, either by direct personal assumption of governmental functions, or by participation in elections for members of the government, or by both, in an open, established and regular manner control the action of the government, and through it express and carry out, if need be by force, commands generally obeyed by the bulk of the community.

In order to raise the conception of the sovereign into greater distinctness and properly to accentuate the salient points of this necessarily cumbersome definition, I shall briefly consider (1) the criteria of sovereignty, (2) its location, (3) some current misconceptions, (4) its three classical forms, (5) the principle

[1] See Dicey, The Law of the Const. (1st ed.), p. 69; Austin, Juris, vol. i, p. 253.

[2] Fowler, The City-State, p, 162 ff.; Bluntschli, Theory of the State (trans. 1892), pp. 460, 461.

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underlying them, (6) its unity, (7) its limitations and (8) its mode of exercise.

1. The above definition shows that the possession of secret, disorderly or spasmodic power in political affairs falls short of a participation in sovereignty. For example, Madame de Pompadour was able to persuade Louis XV, and by her intrigues could send ministers "tumbling one after the other like the figures of a magic lantern"; still no constitutionalist would assign her other than a mere subject's place in the French political system of her day. Between the time of Pertinax and that of Diocletian a licentious soldiery set up and cast down more than a score of Roman emperors; but the empire was not thereby changed from a monarchy to a military aristocracy. Wat Tyler and his Kentish followers did not share in sovereign power, though for a moment they overawed the king and dictated royal charters.

Since the procedure that determines the sovereign is but threefold, appearing sometimes in the immediate exercise of supreme governmental functions by the sovereign, as in absolute monarchy; sometimes in the immediate exercise of a share of governmental functions by one or some of the elements of a composite sovereign and the employment of the suffrage by the remainder, as in Great Britain; and sometimes in the employment of the suffrage alone, as in France and in the United States:[1] it is plain that a resort to mere organs of public opinion, such as petitions, mass-meetings, demonstrations like those of Chartists and Coxeyites, the lobby and the press, for the purpose of exerting sway over government, even though not transcending constitutional bounds, does not of itself suffice to place any one among the constituent elements of the sovereign. Aliens, minors and women all use these agencies, but are never merely for this cause counted as part of the political people of the state.

Political power in its widest sense has the *differentiæ* neces-

[1] In its highest grade government is partly hereditary and partly elective in Great Britain, while in France and the United States it is wholly elective. See Burgess, Political Science, *etc.*, vol. ii, pp. 18, 19, 22, 23, 35.

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sary to specialize it into sovereignty only when it manifests itself in commands generally obeyed throughout the state, and has in overt and definitely ordered correspondence with it governmental officers for the formal expression and execution of such commands — officers who, in so far as distinct from the person or body wielding the power in question, are the creatures and removable agents of that person or body.

2. The question where sovereignty resides is thus always one of fact, to be determined by an analysis conducted under the guidance of the criteria just indicated. Its location differs in different states, and, even in the same state, frequently shifts widely with the advance of time. Thus in the England of William the Red, when the king's justiciar, Ranulf Flambard, "drove and commanded his gemots" over all the land, and exercised his "malignant genius" in devising the most burdensome exactions of feudal law, the sovereign power had one depository, *viz.*, the Norman kingship;[1] but it had quite another in the England of William IV and Victoria, of Lord John Russell and Mr. Disraeli and the reform bills of 1832 and 1867.

3. Although generally adhering to the maxim, "*Rectum et sui index et obliqui*," I pause here for a moment to mark certain prevalent errors about the location of sovereignty, because in this way I can conveniently raise into clearer relief some of the points that have been brought out above.

It is often said that sovereignty in states characterized by a high degree of constitutional freedom,[2] belongs to or resides in "the people." Thus Pomeroy asserts that, according to the American theory, "sovereign power should be conceived as indivisible in its nature, and as appertaining to the totality of the members of the body politic — to the entire people."[3] "In

[1] Montague, Elements of Eng. Const. Hist., p. 25; Goodnow, Comparative Adm. Law, vol. i, pp. 97, 98. See Burgess' views on the "three great revolutions in the political system of Great Britain," *op. cit.*, vol. i, pp. 92, *et seq.* Stubbs, Const. Hist. of Eng., vol. i, p. 338.

[2] *I.e.*, a system in which "the private members of the community exercise an effective control over the government." Sidgwick, Elements of Politics, p. 362.

[3] Const. Law, p. 5, pp. 28, 29.

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America," writes Cooley, "the leading principle of constitutional liberty has from the first been, that the sovereignty reposed in the people."[1] The incorrectness of these views is demonstrable. For sovereignty, however widely democratized, never belongs to more than a minority of the members of the state. Women as a class only here and there share appreciably in it, and children are excluded from it; but women and children together make up the bulk of the population of every independent political community. Of course, it is easy to imagine a civil society entirely composed of adults of sound mind, who all participate in the direction of the government in the ways above specified. But nowhere outside of such a Utopia does sovereignty reside in "the people."

The error just noticed is palpable. More misleading and harder to expose is the false doctrine contained in the proposition that "the state as a person is sovereign and therefore we speak of the sovereignty of the state (*Staatssouveränität*)." This is the teaching of Bluntschli,[2] and also of those who say, as Hearn does, that positive law is "the command of the state or politically organized community."[3]

Reflection discloses that since the sovereign is a source of command and compulsion, sovereignty cannot actually appertain to the state regarded as an artificial person. Every true command is the expression of a desire touching the observance of a mode of conduct, backed by a purpose of punishing disobedience. But surely, supramundane existences aside, such desire and purpose can only arise in natural persons, that is, in real human beings. The personality of the state is merely "a sort of personality."[4] Strictly speaking, the state, as a distinct entity, has no psychology, and is incapable of entertain-

[1] Principles of Const. Law, p. 23. But see Cooley, Const. Lim., p. 29, where it is said that "as a practical fact, the sovereignty is vested in those persons who are permitted by the constitution of the state to exercise the elective franchise."

[2] The Theory of the State (trans. 1892), p. 500.

[3] Legal Duties and Rights, p. 17.

[4] According to Bluntschli, the state has not only personality but also gender; it is an "organized masculine personality" (*der Mann*). The Theory of the State (trans. 1892), pp. 23, 24, n. 2.

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ing motives or of exercising volition. Much of what we read nowadays about the "organism of the state," about "group psychology" and "group will," approaches that mysticism in law and politics which Austin, with perhaps excessive acerbity, was wont to term "jargon" and "fustian." At best, these expressions are a perilous kind of figurative language. The so-called will of the state (*Staatswille*), command of the state and sovereignty of the state are at the bottom nothing else than the will, the command and the sovereignty of some member or members of the state.[1] Political science cannot be founded on metaphor. It must discard fictions and seek to reach the facts as in themselves they really are.

Still more extravagant in their aberrance is the class of writers who divorce sovereignty from every semblance of personality, urging with abundance of fervid rhetoric that the true sovereign is reason, justice, ideal law. "The voice of humanity," declares Guizot, "has proclaimed that the right of sovereignty vested in man, whether in one, in many or in all, is an iniquitous lie."[2] "Justice then is sovereign," says Royer-Collard, "because justice is the rule of right. The purpose of free constitutions is to dethrone force and to make justice reign."[3]

In the preceding chapter I took pains carefully to mark that the independent political community does not rise to the level of the state until its sovereign, withstanding the impulses to arbitrariness that result in despotism, acts largely in accordance with ethical requirements. This, however, does not satisfy theorists of the romantic school of Guizot. Animated by hatred of tyranny, and full of enthusiasm for the right, they rush into "the error of ideocracy."[4] Because the sovereign of the state habitually proceeds in conformity with the method of reason or justice or ideal law, they maintain that reason or justice or ideal law rules in the state. Thus they lose the

[1] See Taylor, The Right of the State to Be (Ann Arbor, 1891), pp. 28–36.
[2] Representative Govt. (Bohn's ed.), lect. vi, p. 59.
[3] Quoted by Bluntschli, *op. cit.*, p. 499, n. 3.
[4] *Ibid.*, p. 500.

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operator in the *modus operandi,* and conjure up a sovereign without personality, devoid of will and of force,[1] a futile abstraction, disowned alike by sound political philosophy and by historical fact.[2]

4. Differences in the number of persons from whom the superior manifestations of sovereign power proceed give rise to the three classical forms of the sovereign. I say "superior manifestations"; for it must be noted that these forms do not depend solely upon whether the number exercising sovereignty be one, few or many: they depend also upon the grade of sovereignty so exercised. In a state, therefore, where government in its higher and wider action is directed exclusively by one or a few, the sovereign is monarchic or aristocratic, even though at the same time government in its petty and merely local or communal action is directed by the many.[3] Accordingly, when the sovereign power of directing the higher and wider action of government is resident in a single member of the state, the sovereign is monarchic; when it pertains to a number of members that

[1] Rousseau, with all his sentimentalism, did not dream of divesting the sovereign of force: "Quiconque refusera d'obéir à la volonté générale y sera contraint par tout le corps; ce qui ne signifie autre chose, sinon qu'on le forcera d'être libre." Contrat Social, l. i, ch. viii. On the other hand, Pascal's pessimism hindered him from recognizing the element of justice in the sovereignty of the state, and he attributed to it force alone: "Ne pouvant faire que ce qui est juste fût fort, on a fait que ce qui est fort fût juste." Pensées, Art. xv, § 17.

[2] In his work on Sovereignty, Bliss says: "That reason, that justice, in civil administration is our only sovereign, is more than a metaphor; the idea commands more than speculative approbation. As the suzeraine *could* command the homage, the obedience of his subjects, so reason, so justice *should* command the homage, the obedience of society." Later, he quotes with approval the following passage from James Wilson's lectures: "As to human laws the notion of a superior is a notion unnecessary, unfounded and dangerous — a notion inconsistent with the genuine system of human authority." It is political science of this sort that makes us turn to what Pollock calls "the stern limitations and the crabbed analysis" of Austin, not merely with patience, but with a lively feeling of gratitude. With perfect concinnity Professor Bliss has produced a treatise on "Sovereignty" for the purpose of showing that in what he calls the federal state, at least, sovereignty has no existence, and that the word should be expunged from the vocabulary of politics (ch. xii).

[3] Thus in Russia the form of the sovereign is monarchic, notwithstanding the fact that in the village communities, containing about five-sixths of the population, the heads of households exercise an inferior grade of sovereignty.

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is small relatively to the whole adult population, the sovereign is aristocratic; when it pertains to a number of members that is considerable or large relatively to such population, the sovereign is democratic.

To illustrate: early in the third century Ulpian wrote the famous sentence, "Quod principi placuit, legis habet vigorem," and thus correctly pointed out the monarchic character of the then existing sovereign in the *Orbis Romanus*. At that time there remained only a trace of the political hypocrisy inculcated by the "maxims of Augustus." The forms of popular legislation had long since ceased to be observed. The senate, once an "assembly of kings," whose authority held the highest magistrates in subservience to its will, had sunk into a mere tool of the principate, and the emperor no longer hesitated openly to appear — what from the first he had been in almost all but seeming — the sole *dominus* of every agency of public rule. Again: whatever may have been the character of the sovereign power in England at an earlier period, during the fifteenth century it definitely assumed an aristocratic type, as the result of the severe restriction of electoral privileges which was then effected;[1] and this character it retained, despite the Tudor reaction toward absolutism, on the one hand, and the attempt under Cromwell's Instrument of Government and the efforts of Chatham, on the other, until the diffusion of the right of voting that followed the Parliamentary reforms of 1832 and 1867. Finally: democratic sovereignty is exemplified by the United States, Great Britain and the German Empire; for in each of these states the control over the culminating elements of their respective governmental systems is shared by a very large proportion of the mature male population. In the United States such persons possess proximately equal constitutional means of making themselves felt throughout the upper ranges of government; while in Great Britain, and much more in the German Empire, such persons possess unequal constitutional means of making themselves thus felt. In the Empire, for instance, there is a vast difference between the mere elector, who can only send

[1] Hannis Taylor, The Eng. Const., I, 527, 575; May, Const. Hist., II, 460, 461.

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his "twenty-thousandth part of a talker to the national palaver" of the Diet, and the *Kaiser*, with his many voices in the Federal Council. Sovereignty, however, is democratic, not through the equipollence, but through the relative numerousness of those who join in wielding its superior grades of power.

5. At first glance there seems to be validity in the criticism that the principle underlying the three classical forms of the sovereign is merely arithmetical; that it is inexpressive of any significant fact or force, and hence is shallow and unfruitful. Schleiermacher has successfully vindicated the genuine scientific import of the classification.[1] Although these forms depend immediately upon differences in the number participating in the superior grades of power exercised by the sovereign, they are founded ultimately upon the degree of the extension of "political consciousness" among the members of the state. The phrase political consciousness, though of frequent occurrence, has not attained a fixed meaning. I employ it here to denote a rational apprehension of the rôle played by government in civil society, coupled with a permanent desire to bear a part in determining the modes and ends of its action. To possess political consciousness, then, is to have an understanding of what is and can be effected through the instrumentality of government, and a settled wish to share in its working. It is in consequence of the development of political consciousness in breadth and intensity that sovereignty has displayed a tendency to assume, after the monarchic, the aristocratic and then the democratic form.[2] I say "tendency," because this transformation has by no means gone on in steady correspondence with the increase of its cause, but has usually lagged behind — not seldom very far behind. Nevertheless, the constitutional history of the progressive nations discovers plainly enough the law that, sooner or later, political consciousness objectifies itself in appropriate civil institutions: no part of the population in which it is strongly developed ever fails, in the

[1] For a brief *résumé* of Schleiermacher's views, see Bluntschli, The Theory of the State (trans. 1892), 335–337.

[2] See Puchta, Outlines of Juris. (trans. by Hastie), 80, 82; Maine, Ancient Law (3d ed.), 11.

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end, to grasp a material share of sovereignty in the state. The present condition of the woman suffrage movement shows that the greatest obstacle to the attainment of the full privileges of citizenship by women, is the feebleness of their political consciousness. What Bryce has said of them, with the United States especially in mind, is equally true as to all highly civilized countries: "The suffragists have some ground for the confidence of victory they express. If they can bring the public opinion of women themselves over to their side, they will succeed."[1]

6. That the sovereign is necessarily single, is a commonplace in discussions upon the theory of the state. Hobbes, for example, affirms that there is a "doctrine plainly and directly against the essence of the commonwealth; and it is this, that the sovereign power may be divided. For, what is it to divide the power of a commonwealth but to dissolve it; for powers divided mutually destroy each other."[2] Let us, then, consider briefly the nature of this unity, the grounds of its necessity and the conditions of its realization.

It is seen at once that this unity does not require that the sovereign should consist of a single person only. What it does require is that, when the sovereign includes a number, they should act in the performance of the function of the sovereign as if they were one; or, in a word, should constitute a functional whole. The requisite unity of the sovereign is revealed from the standpoint of its outcome. It must have the inherent capacity of originating a performable body of commands, instead of a *mélange* of "cross and cuffing"[3] injunctions. Obviously this capacity could not belong to two or more mutually unrelated centers of authority attempting to exercise full sovereignty throughout the same community. Again, there can be no real civil organization, no true relation of sovereign and subject, without general obedience on the part of the ruled.

[1] American Commonwealth, II, 448.

[2] Leviathan, ch. xxix.

[3] King James's address to Parliament in 1609. See *Westminster Review*, CXXI, 458.

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But in a society exhibiting political superiors entirely independent in their operation, so that chance only would prevent their commands from falling into constant collision, general obedience would be inconceivable. "Nullus homo potest duobus dominis servire."

By implication, the conditions of the functional unity of the sovereign have already been pointed out. When the sovereign is an individual, the requisite oneness is an inevitable result of its uncompounded character. When the sovereign embraces a number, this oneness depends upon organization. Its elements are so coördinated, or so coördinated and subordinated, that their joint working creates for the subjects in the state a feasible scheme of legal duties — one that, translated into conduct, appears as a veritable civil order.

A most notable illustration of the kind of organization above described is furnished by the United States, where the possession of the political franchise indicates the constituents of the sovereign. Here millions of voters are associated in very numerous collegiate aggregates of widely varying degrees of compositeness, each of which aggregates has in correlation with it, and subject to its control, a determinate part of the machinery of government, both legislative and administrative. These aggregates, in spite of their vast multiplicity and their great differences in structure and in range and importance of power, are all made to coöperate in the accomplishment of the end for which the sovereign exists by means of an elaborate set of constitutional adjustments, according to which each aggregate, with its corresponding governmental apparatus, has an orbit of jurisdiction or functional competency separate from, and at the same time complementary to, that of every other aggregate. Thus, paramount grades of sovereignty are exercised by the highly compounded aggregate that controls the governmental apparatus whose action is required for the amendment of the federal constitution; lower grades are apportioned to the aggregates that respectively determine the federal government and the several commonwealth governments; and still inferior grades are allotted to those aggregates that direct the operation

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of local government in counties, townships and municipalities. The unity of the sovereign effected by this organization is such that, disregarding minor flaws, there is established for each subject of the state a harmonious and practicable system of positive legal rules, *i.e.*, one that does not expose him to contradictory, and hence impracticable, demands. "The American citizen," says Macy, "lives under not less than five institutions called governments."[1] This is an under-statement, rather than an over-statement, of the truth. Nevertheless, the citizen's positive legal duties are as certain as are those of a subject of the Russian Czar. The devices employed to this end are like those of a "great factory wherein two [one might say six or seven] sets of machinery are at work, their revolving wheels apparently intermixed, their bands crossing one another, and each doing its own work without touching or hampering the other."[2]

7. It has been erroneously asserted that the sovereign is omnipotent. The doctrine that the sovereign has the "power of compelling the other members of the community to do exactly as it pleases," and of putting "compulsion without limit on subjects or fellow-subjects," has been attributed to Austin by various authors.[3] Austin, however, did not accept it[4] any more than did his predecessors, Bodin[5] and Locke,[6] and, considering its palpable extravagance, one cannot easily see how it ever found place in the books.

In a thousand directions sovereignty is effectually abridged by the force of public opinion. Thus, it is limited by the operation of international law, which embodies public opinion in its most august and imposing, if not its most drastic, form.

[1] Our Government, p. 1.

[2] The American Commonwealth, vol. i, p. 318.

[3] See Maine, Early History of Insts. (N. Y., 1875), pp. 349, 350; Crane and Moses, Politics, p. 38.

[4] POLITICAL SCIENCE QUARTERLY, IX, 31 *et seq.*

[5] Bodin "tells us of organic laws or rules which may be so closely associated with this or that sovereignty that they cannot be abrogated by the sovereign power itself, and he instances the rule of succession to the French crown." Pollock, Hist. of the Science of Politics, p. 51.

[6] Locke, Treatises on Govt., bk. ii, ch. xi.

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At a juncture when the cardinal unifying influences of the middle ages were fast failing, when feudalism as a political system was hopelessly discredited, when the Reformation had broken the sword of the Pope, and the sword of the Emperor had become a mere phantom, the labors of Ayala, Gentilis, Suarez and, preëminently, of Grotius formulated a body of rules bearing upon the mutual dealings of states which made swift conquest of the intelligence and conscience of Europe[1] and presently thereafter began to produce a sensible effect in the region of practice and history. Although it is true, as Lavisse declares, that "all these fine maxims, without a single exception, were flagrantly violated by the various governments, without a single exception,"[2] nevertheless it has come to pass that this seemingly flimsy code of public opinion, without a recognized organ of legislation, without an acknowledged tribunal, without definite sanctions, has succeeded in winning an authority which the most puissant of modern nations would not dare formally to repudiate. To-day, none of its established precepts is openly scorned, and many of them receive an obedience as constant as that accorded to the injunctions of positive law by the members of orderly commonwealths.

But, in addition to the constraint put upon it by international law, the power of the sovereign is always dependent also upon the subordination of the subjects, which is itself limited.[3] As Dicey well says:

> It would be an error to suppose that the most absolute ruler who ever existed could in reality make or change every law at his pleasure. . . . This is shown by the most notorious facts of history. None of the early Cæsars could, at their pleasure, have subverted the worship or fundamental institutions of the Roman world, and when Constantine carried through a religious revolution his success was due to the sympathy of a large part of his subjects. The Sultan could not abolish Mohammedanism. Louis XIV, at the height of

[1] Maine, Ancient Law (3d Am. ed.), p. 106; Bluntschli, Das Moderne Völkerrecht (Nördlingen, 1878), § 17.

[2] Polit. Hist. of Europe (trans. by Gross), p. 85.

[3] See Stephen, the Science of Ethics, p. 143.

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his power, could revoke the Edict of Nantes, but he would have found it impossible to establish the supremacy of Protestantism, and for the same reason which prevented James II from establishing the supremacy of Roman Catholicism.[1]

According to the conception of sovereignty I am here presenting, the measure of truth to be found in the doctrine of the omnipotence of the sovereign is this: when the sovereign organ is a monarch, *stricto sensu*, or a body taken integrally, it cannot be bound by the obligation of positive law; and the same is true of the paramount portion of a sovereign organ composed of parts exercising different grades of authority. This is a mere corollary of the definition of positive law — a command of a *superior bearing the marks of sovereignty*. Obviously there can exist in the state no such superior over either of the three varieties of ruling power described above. Thus, the Sultan of Turkey cannot be trammeled by any bonds of positive law; neither could the Roman *nobilitas* as it appears in the later books of Livy and during what has been called the period of the "perfection of oligarchy" at Rome;[2] nor can the supreme portion of the vast composite sovereign power of the entire British Empire, *viz.*, the lords and the electors of the House of Commons. It is clear, however, that limitation by positive law is quite possible in the case of the subordinate portions of a composite sovereign organ, because for such subordinate portions there exists a superior characterized by the notes of sovereignty. Accordingly, we see that the part-sovereigns of the colony of Victoria and of the Dominion of Canada are restrained by positive laws which they cannot change, and which are changeable only by the culminating portion of the sovereign of the whole Brit-

[1] The Law of the Const. (1st ed.), pp. 70, 71, 72.

[2] At this time, not theoretically, but actually, the *nobilitas* was the sovereign power of Rome. See Fowler, The City-State, p. 220. The chief governmental instrument of this sovereign *nobilitas* was, of course, the senate. *Id.*, pp. 230 ff. The senate, in turn, controlled the magistrates, and the magistrates the assemblies. Tighe, Development of the Rom. Const., p. 127. See Freeman's Historical Essays, vol. iv, pp. 410 ff.

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ish Empire regarded as a single state. Likewise the sovereign people of the several commonwealths of the United States are, as such, subject under positive law to that highest sovereign people to whom is committed the function of constitutional amendment.

8. It must be noted that in states having a sovereign of plural form the action of government is not controlled by the whole sovereign number, but only by parts, and that, therefore, in such states positive law is not the command of the entire sovereign, but merely of certain of its components. There is, however, more general concurrence than at first glance appears. I think that we shall not fairly be chargeable with super-refinement, if we maintain that all the members of a sovereign aggregate, by their voluntary coöperation in that capacity, do really assent to every positive law formulated and enforced by the government which that aggregate constitutionally determines. Knowing that disagreements are inevitable, every sensible person belonging to a sovereign body desires that less than all should have the power of effectual governmental control, the alternative being deadlock, or anarchy more or less pronounced.

To the extent here indicated, there is reality in Rousseau's contention that every true law is an expression of the *volonté générale*. On close examination Rousseau's "general will" proves to be but the will of a greater or smaller majority of the voters who compose the sovereign, rendered under such conditions of voluntary coöperation that it necessarily bears along with it the tacit, though real, assent of the apparently opposed minority. The majority desire the measure passed, *specifically;* the minority, *compendiously*, as wishing, first of all, in common with the whole body of citizens, the maintenance of the principle of majority rule. Where unanimity is wanting, the will of the strongest must prevail, or else the law must be committed to the weaker party and thus devoted to desuetude and death. In exercising the right of suffrage, says Rousseau, "each elector takes part in a proceeding for the discovery of the general will. When an opinion contrary to mine prevails,

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that only shows that I was mistaken, and that what I thought to be the general will was not."[1]

Nor is Rousseau's view repugnant to the current and popular way of thinking. I deem myself not less a legislator than my neighbor, though his party, and not mine, has ruled the councils of the state for half a century. His opportunity is not my effacement. As Locke puts it, in a passage of which the matter leaves less to be desired than the manner:

> That which acts any community being only the consent of the individuals of it, and it being a body, must move one way; it is necessary the body should move that way whither the greatest force carries it, which is the consent of the majority, or else it is impossible it should act or continue one body, one community, which the consent of every individual that united into it agreed that it should; and so every one is bound by that consent to be concluded by that majority.[2]

Doubtless one cause of this acquiescence is acceptance of the doctrine that at bottom power and right are coincident. This belief, which the eloquence of Carlyle has most persuasively advocated on its historical side, has on its philosophical side received a vigorous support at the hands of the late Professor Lorimer in his *Institutes of Law*, and is by no means devoid of justification by the "world historical judgment"[3] and the "long result of time."

III. *The Government.*

There is no cause for surprise that the difference between the sovereign and the government has only in recent times been clearly apprehended. Early observers of the phenomena

[1] Contrat Social, l. iv, ch. 2.

[2] Treatises on Gov., bk. ii, ch. viii, § 96. The poverty of Locke's influence as a political writer, compared with the wide domination of Rousseau, is largely due to the painful lack of literary style in the former's work, and well illustrates Émile Deschamps's axiom: "La forme n'est rien, mais rien n'est sans la forme."

[3] "Die Weltgeschichte ist das Weltgericht"; said first by Schiller in a poem called "Resignation." See Bluntschli, The Theory of the State (trans. 1892), pp. 266, n. a.

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of politics, confronted by the city-states of antiquity, saw the sovereign and the government in complete, or nearly complete, coalition. They wanted suitable objective aids to the making of this important discrimination. Likewise, the observers who wrote after the study of politics had revived from the sleep of the middle ages, found themselves almost everywhere, except in England, surrounded by absolute monarchies, and in these they beheld the *personnel* of the sovereign completely merged in that of the government. Here, too, were lacking "the proper external occasions for the excitation of thought." It was left for Bodin, and later Rousseau, firmly to grasp and clearly to set forth this neglected distinction. They have been followed in our country by Pomeroy[1] and Burgess.[2] It is the fashion nowadays to depreciate Rousseau; I think, however, that he has treated this subject justly and luminously, and therefore I substantially adopt what he says in the first chapter of the third book of the *Contrat Social.*

The public force, says Rousseau, requires an agent to concentrate it and set it to work according to the directions of the general will — to serve as a means of communication between the state and the sovereign, and to effect in the state something analogous to what the union of soul and body does in a man. This agent is the government, often unfortunately confounded with the sovereign, whose minister it is. It transmits to the people the sovereign's commands and sees to it that they are obeyed. The government is composed of simple officers of the sovereign, who exercise in its name the power of which it has made them the depositories, and which the sovereign can limit, modify and resume at pleasure. Nevertheless, the government has a real separate life, *un moi particulier*,[3] a certain discretional authority of its own, — the authority, we may say, of the expert,[4] — which serves to distinguish its members from mere official assistants, such as clerks, inspectors, revenue collectors, *etc.*,

[1] Constitutional Law, p. 28.

[2] Political Science, *etc.*, vol. i, pp. 69 *et seq.*

[3] Contrat Social, l. iii, ch. i.

[4] See as to this analogy of the "expert," Sidgwick, Elements of Politics, pp. 587, 588.

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and the still humbler functionaries like lacqueys, porters and policemen.[1]

Passing by the ancient separation of governments into monarchies, aristocracies and democracies, as presenting nothing that need detain us, we come directly to the differentiation of government into legislative, executive and judicial branches, according to variations in the functions performed by its component elements. The importance of this division of labor to the existence of civil liberty was most powerfully urged by Montesquieu in his celebrated *Esprit des Lois*.[2] "Si la puissance de juger," he writes, "était jointe à la puissance législative, le pouvoir sur la vie et la liberté des citoyens serait arbitraire." This view was afterwards adopted by Blackstone in his no less famous *Commentaries* and by Paley in his *Moral Philosophy*, and it found vigorous expression in the work of American constitution-makers.[3]

Montesquieu based his notion upon a study of the free constitution of England, but his observations were entirely erroneous.[4] Liberty does not depend upon "the separation of powers," because this separation does not exist either in England or elsewhere. Locke vaguely intimated the truth on this point,[5] and Madison expressly declared it in the *Federalist:*

> On the slightest view of the British constitution we must perceive that the legislative, executive and judicial departments are by no means totally separate and distinct from each other. . . . If we look into the constitution of the several states, we find that notwithstanding the emphatical, and in some instances the unqualified, terms in which the axiom has been laid down, there is not a single instance in which the several departments of power have been kept absolutely separate and distinct.

The most that can be averred without impeachment is, that in

[1] Bluntschli, The Theory of the State (trans. 1892), pp. 527, 528.

[2] L. xi, ch. vi. See Crane and Moses, Politics, p. 195.

[3] See, for example, the Massachusetts Bill of Rights. As to the influence of the Esprit des Lois on American statesmen, see Bryce, American Commonwealth, I, 26.

[4] Goodnow, Comp. Adm. Law, vol. i, pp. 19–24.

[5] Treatises on Govt., bk. ii, chs. xii, xiv, §§ 148, 159.

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the main executive powers are exercised by the executive, judicial powers by the tribunals and legislative powers by the legislature; and that this partial specialization of functions is useful, and has generally been adopted in the actual constitutions of modern states.[1]

For the sake of brevity, let us confine our attention to the exercise of the law-making function by the three divisions of government, drawing our illustrations from the United States, France and England. In the United States the chiefs of the eight great executive departments constantly promulgate rules for the direction of their subordinates — rules in whose origination Congress has no part except upon the theory that what a political superior permits, — what he might, but does not change, — he enjoins. The English cabinet, while commanding the full powers of the crown,[2] in which the older, classical commentators upon the British constitution placed the entire executive force of the nation,[3] at the same time formulates all government bills and controls the entire course of the legislative processes of Parliament. But the cabinet is made up entirely out of the *personnel* of the two houses, being, in Bagehot's view, "a board of control chosen by the legislature, out of persons whom it trusts and knows, to rule the nation." Again he calls it "a hyphen which joins, a buckle which fastens, the legislative part of the state to the executive part of the state."[4] Every reader of Mr. Dicey's remarkable book on the *Law of the Constitution*, is acquainted with the vast extension of the *droit administratif* in France, which is distinctly a creation of executive functionaries.[5]

The part played in the making of law by English tribunals and those of English origin and mould, is less obtrusive, because their judges and lawyers, as if guiltily conscious of encroachment upon territory appropriated to another, constantly shroud their legislative operations in formulas of mere

[1] Sidgwick, Elements of Politics, p. 345.
[2] Burgess, Political Science, *etc.*, vol. ii, p. 213.
[3] Blackstone, Commentaries, vol. i, p. 249.
[4] The English Const. (N. Y. 1893), pp. 81, 82.
[5] The Law of the Const. (1st ed.), p. 196 ff. See also p. 187.

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legal interpretation. Nowadays these tribunals do not, indeed, go so far as the English mediæval courts, which, in Taltarum's Case, for instance, ventured virtually to repeal a great statute of nearly two centuries' standing;[1] or so far as the chancellors who created the equitable doctrines of trusts and mortgages in the teeth of the common law:[2] but, day by day, through "spurious interpretation" and clear innovation they still eat away old rules of law and keep supplying new ones.

The question has been raised, whether, in modern representative democracies, the law-making parts of government can fairly be regarded as "ministers" of the sovereign in the performance of their functions. In agreement with Rousseau, it was conceded that the legislature has a measure of discretional authority, "*un moi particulier*;" and the only doubt is, whether this authority is wide enough to confer what may justly be called independent power. Of course, we have nothing to do here with a discussion of how it ought to be, or how it is in ideal states. That is a matter of "deontology," as Bentham calls it — of *morale*, not of analytical or theoretical, as opposed to practical, politics. It is mainly from this rejected standpoint that the subject has been treated by Mill in his *Representative Government*, by Sidgwick in his recent *Elements of Politics* and by a host of other writers.

In order to confine our inquiry to the smallest possible space, let us consider this matter especially with reference to the two leading democracies of the world, England and the United States. It will be worth while to note some leading opinions upon the relation that actually exists, and continually tends to fuller existence, between the legislature and the sovereign power in these two countries.

According to Dicey,

> the essential property of representative government is to produce coincidence between the wishes of the sovereign and the wishes of the subjects. . . . This, which is true in its measure of all real rep-

[1] Statute De Donis Conditionalibus, 13 Ed. I, ch. i (1285). See Digby, Hist. of the Law of Real Prop. (2d ed.), pp. 220–223. This occurred in 1472. Monahan calls it "a piece of solemn juggling." Method of Law, p. 14.

[2] Digby, *op. cit.*, pp. 333 ff.; pp. 250 ff.

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resentative government, applies with special truth to the English House of Commons.[1]

Burke called the House of Commons "the express image of the feelings of the nation."[2] Austin says:

> Speaking accurately, the members of the commons' house are merely trustees for the body by which they are elected and appointed; and, consequently, the sovereignty always resides in the king and the peers with the electoral body of the House of Commons. That a trust is imposed by the party delegating, and that the party representing engages to discharge the trust, seems to be imported by the correlative expressions *delegation* and *representation*.[3]

Burgess maintains that "the suffrage-holders, when electing a House of Commons upon the issue of a new governmental policy, are in the British system the state [sovereign]," of which the cabinet is "the immediate representative."[4] "Towering over presidents and state governors," declares Bryce, "over congress and state legislatures, over conventions and the vast machinery of party, public opinion stands out in the United States as the great source of power, the master of servants who tremble before it."[5] "A steady opposition to a formed public opinion," says Bagehot, "is hardly possible in our House of Commons, so incessant is the national attention to politics, and so keen the fear in the mind of each member that he may lose his valued seat."[6]

If the passages above quoted are not so applicable to the relations subsisting between the sovereign and the legislature in the representative systems of France, Germany and Italy, this seems due to the fact that the electorates in these countries are masters merely less alert and less exacting, — to a sort of hebetude, a languid political consciousness, that springs from deficient practice and discipline in the art of local self-

[1] The Law of the Constitution, p. 78.

[2] Cited by Wilson, Congressional Govt., p. 227.

[3] Jurisprudence, vol. i, p. 253.

[4] Political Science, *etc.*, vol. ii, p. 215. See also Montague, Elements of English Const. Hist., pp. 214, 215.

[5] The American Commonwealth, vol. ii, p. 255.

[6] The English Constitution (N. Y., 1893), p. 309.

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government, rather than to any essential defect in their powers of sovereignty.

Some writers lay too much stress upon the circumstance that representatives are generally uninstructed.[1] But they are not uninformed concerning the wishes of their constituents, or about the penalty attached to a disregard of these wishes. There has been no need of formal instructions to insure that Louisiana Congressmen should vote for a tariff on sugar, California Congressmen against generous treatment of the Chinese, or Southern statesmen for the repeal of the federal election laws. That the trust conferred is enforceable only by moral and political sanctions, is quite immaterial to the point at issue. Upon the sovereign agency employed to make this trust binding we have already dwelt. It has never been better indicated than in the protest of the Lords when the English Parliament, in 1716, prolonged its duration, without popular mandate, from three to seven years. Thereby their constituents, the protesting peers declared, were "deprived of the only remedy which they have against those who either do not understand, or through corruption do wilfully betray, the trust reposed in them, which remedy is to choose better men in their places."[2]

Coming now to a consideration of the sovereign's directive power over the law-making function of the courts, it must be granted that the latter enjoy a larger degree of immunity from interference than does the legislature. Still even here the hand of the sovereign is not so shortened as to lose its ability to control. In the United States the tenure of the law-making judges is indirectly, where not directly, elective, and there is generally manifested a growing tendency to increase the judges' sense of responsibility to the sovereign by shortening their terms of office, and making their appointments depend upon direct popular choice.[3] Moreover, along with the prodigious

[1] The principle of instructed representation finds expression in the German Federal Council (*Bundesrath*). This is disapproved by Prof. Burgess on the ground that "the *will* of a constituency has no place in the modern system of representative legislation." *Op. cit.*, vol. ii, p. 116.

[2] Thorold Rogers, Protests of the Lords, vol. i, p. 228.

[3] This policy, which was begun by Georgia, has been adopted by a majority of the states. Macy, Our Government, p. 104.

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activity characteristic of modern legislatures proper, has naturally gone a restriction of the scope of the law-creating power of the courts. The judge is restrained from innovations by the knowledge that there is a restless and lynx-eyed legislature ready to pounce upon and nullify them. Even the judgments of the Supreme Court of the United States are subject to disallowance by the sovereign, as the Dred Scott Case was set aside by the Fourteenth Amendment. Furthermore, courts can be kept in subservience to the popular will through the action of the legislature in augmenting the number of their members, in depriving them of jurisdiction, or in abolishing them altogether; and the history of this country exemplifies all these extraordinary means of control. The result has been admirably summed up by Wilson in the following passage:

> Indeed it may be truthfully said that, taking our political history "by and large," the constitutional interpretations of the Supreme Court have changed, slowly but not the less surely, with the altered relation of power between the national parties. The Federalists were backed by a Federalist judiciary; the period of Democratic supremacy witnessed the triumph of Democratic principles in the courts; and Republican predominance has driven from the highest tribunal all but one representative of Democratic doctrines.[1]

If, now, we should turn our attention to the other modern free states, we should, I believe, be able to trace in them essentially the same dependency of the legislating parts of government upon the sovereign which has been marked in the cases of England and the United States.

To summarize the results of this long inquiry in the briefest possible formula, it may be said that, regarding our triad of conceptions from the standpoint of jurisprudence and in their relations to positive law, the state is the theater of positive law — the stage on which it plays its beneficent rôle of civil order; the sovereign is the commander of positive law; and the government is the formulator and administrator of positive law.

CHARLES MALCOM PLATT.

ASHEVILLE, N. C.

[1] Congressional Government, p. 37 (written in 1884).

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REVIEWS.

The Evolution of Modern Capitalism. A Study of Machine Production. By JOHN A. HOBSON, M.A. London, Walter Scott; New York, Charles Scribner's Sons, 1894.—383 pp.

At a time when the air is surcharged with anti-capitalist sentiment and the press is constantly turning out quasi-socialistic productions, it is encouraging to take up a book which even aims to consider modern capitalism in a scientific spirit. Mr. Hobson starts out well and for the first four chapters hews closely to the line of scientific discussion. His treatment of the order and development of machine industry is very interesting both historically and economically. He finds little difficulty in showing that the growing differentiation and integration of machine industry is highly beneficial to all classes in society.

But when the author reaches the question of trusts, which he insists are monopolies, he fails to maintain his otherwise high standard of economic criticism. He very properly lays great stress upon the importance of maintaining the competitive principle in order that the community may get the advantage of improved processes developed by integrated capital. But he clings altogether too closely to the narrow early English view of competition. He seems to mistake number of competitors for efficiency of competition, and ignores the force of potential competition—the competitive influence of capital that is ever waiting to step in where large profits warrant the risk. In modern society, this potential competition is often more effective than the actual competition of small competitors.

In his readiness to assume that aggregations of capital under the name of trusts are monopolies which suspend all competition, Mr. Hobson drops into a regrettable laxity of statement and of reasoning. He selects the Standard Oil Company as a typical specimen of the trust. In this he is entirely right; there is probably no better illustration of the trust principle anywhere than the Standard Oil Company. But Mr. Hobson is quite unfortunate in both the selection and the interpretation of facts in the case. As a typical illustration of what the Standard Oil Company has done he recites at great length the story of the so-called South Improvement Company as if it were a veritable organization. He seems not to know that this South Im-

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provement Company never had any real existence; that it never did a dollar's worth of business; that it had absolutely nothing to do with regulating railroad freights or the price of oil; and that every one of the overcharges and abnormal rebates he quotes is purely mythical. The truth regarding this South Improvement Company is, that a certain number of men got together and procured a charter, but as soon as it was learned what their scheme was, the whole thing was exposed and broken up, and mainly by the efforts of leading Standard Oil Company men. To treat the absurd projects of this mythical South Improvement Company as actual doings of the Standard Oil Trust, is a kind of discussion that must be called by some other name than scientific.

Mr. Hobson then proceeds to examine the movements of the price of oil after the Standard Oil Trust was formed, and accompanies his examination by a diagram (page 135) showing that from 1870 to 1875 there was a reduction in the price, due, he says, to "competition." But "1875, which marks the establishment of a monopoly of the interior oil trade in the hands of the Standard Oil Trust, also marks a sharp rise in the price." Instead of taking the pains to ascertain if this were due to any economic cause, he ascribes it all to the arbitrary dictum of the trust and says: "The moral is obvious. So long as there is competition, in spite of the expense of conducting the strife, prices fall. When the competition is suspended and there is a saving of friction, the public gains no further reduction."

Unfortunately the facts do not sustain these sweeping generalizations. The following table covers the entire period referred to by Mr. Hobson:

Year.	Shipments from Wells. Bbls.	Stock of Crude Oil on Hand. Bbls.	Price of Crude Oil per Gallon at Wells.	Price per Gallon of Refined Oil for Export.
1871	5,667,891	568,858	10.52 cts.	24.24 cts.
1872	5,899,942	1,174,000	9.43	23.75
1873	9,499,775	1,625,157	4.12	18.21
1874	8,821,500	3,705,639	2.81	13.09
1875	8,924,938	2,751,758	2.96	12.99
1876	9,583,949	1,926,735	5.99	19.12
1877	12,496,644	2,857,098	5.68	15.92
1878	13,750,090	4,307,590	2.76	10.87

It will be seen from the above that there was no rise in the price of oil until 1876, and that after two years the price dropped to a

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point below the original level. It will also be observed that, taking the average for the two years, the rise in the price of crude was 97 per cent and in that of refined 34 per cent. If we compare the actual rise in the price per gallon of the crude with that of the refined, which is a much closer test than percentage, we find that the average rise in the price of refined for these two years was almost exactly identical with the increase in the cost of crude. It takes about a gallon and a quarter of crude oil to make one gallon of refined. Taking the two years together the average increase in the price of crude oil necessary to make a gallon of refined was 4.33 cents, and the average increase in the price of refined was 4.53 cents a gallon, making a difference in the movement of the two of only .20 cents a gallon. It will be further observed that in 1878, when the stock of crude oil greatly increased and its price fell to 2.76 cents a gallon, the price of refined dropped to 10.87 cents.

A fair consideration of these facts clearly shows that the special rise in the price of refined oil about which Mr. Hobson and others declaim as due to the greed of the Standard Oil Trust, is fully accounted for by the economic causes affecting the price of crude oil; and over these the Standard Oil Company had no control.

Mr. Hobson then says (page 135): "From the time of the formation of the trust the fall of price has been only a half a cent." Here again his facts are at fault. In 1880, the year before the trust was formed, the price of oil was 9.12 cents a gallon. In January, 1895, it was (70 Abel test) 5.80 cents, — a fall of over three cents instead of half a cent.

"It is possible," says Mr. Hobson, "that a firm like the Standard Oil Company may to some limited extent practice a cheap philanthropy of profit sharing, in order to deceive the public into supposing that its huge profits enrich many instead of a few." This is an unfair insinuation, since the Standard Oil Company has never attempted any profit sharing or other philanthropic scheme in connection with its business. It has contented itself with steadily improving the quality and reducing the price of its product, — a course which it has found to be highly profitable.

Mr. Hobson's unscientific attitude on the subject of trusts is greatly to be regretted, since it is the subject upon which scientific precision and economic fairness are most needed. After he gets past the trust question, he resumes an orderly and creditable demeanor. His discussions of the influence of machinery upon consumers, laborers, towns, industrial development and other phases of social life are

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excellent. They show an appreciation of that action of social and ethical forces upon economic development which is too often overlooked by economists.

The chapter on "The Economy of High Wages" is especially good. The author successfully combats the claim of Schoenhof, Atkinson, Rae and others that the individual capacity of laborers to produce increases directly with the rise of wages and the shortening of hours. By some slip (probably typographical error) Mr. Hobson connects the present reviewer's name with that of Mr. Schoenhof in this relation, and says:

> The moral which writers like Mr. Gunton and Mr. Schoenhof have sought to extract and which has been accepted by not a few leaders in the labor movement is, that every rise in the wages and every shortening of hours will necessarily be followed by an equivalent or a more than equivalent rise in the efficiency of labor.

As a matter of fact I have long contended against this view. It is true as a general thing that countries which have high wages have the greatest *per capita* production, but it does not come about in any such way as the Schoenhof-Atkinson-Rae class of writers assume. The way in which higher wages perceptibly increase output, especially where the working day is ten hours or less, is not so much through an increase in the personal efficiency of the laborer, as through the expansion of his social demands. The enlargement of the consuming capacity of the community stimulates the use of improved methods, which gives larger products and consequently lower prices. Mr. Hobson states the case admirably when he says:

> From the standpoint of the community nothing else than a rise in the average standard of current consumption can stimulate industry. When it is clearly grasped that a demand for commodities is the only demand for the use of labor and of capital, and not merely determines in what particular direction these requisites of production shall be applied, the hope of the future of our industry is seen to rest largely upon the confident belief that the working classes will use their higher wages, not to draw interest from investments (a self-destructive policy), but to raise their standard of life by the current satisfaction of all those wholesome desires of body and mind which lie latent under an economy of low wages.

The large kernel of truth in this situation is that all real societary improvement rests not upon saving, but upon consuming; that the road to better social life and more efficient and cheaper production is through constantly increased consumption by the millions. It is not the expansion of the laborer's muscle, but the expansion of his

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desires and the strengthening of his demands and the broadening of his social life that gives happiness, cheapness and progress to society.

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Report on Agencies and Methods for dealing with the Unemployed. By the Labor Department of the British Board of Trade. London, Eyre & Spottiswoode, 1893. — 438 pp.

The Unemployed. By GEOFFREY DRAGE, Secretary to the English Labor Commission. London and New York, Macmillan & Co., 1893. — 12mo, 277 pp.

The Board of Trade's *Report* is a valuable summary of modern attempts in Great Britain, and to some extent in other countries, to solve the problems of unemployment. Especially useful are those parts of the report dealing with facts and immediate deductions from facts; where classification and broad generalization have been attempted, the results are sometimes confusing and even contradictory. Yet this is scarcely to be wondered at; for previous writers upon the unemployed, as well as practical field workers who have come in touch with this complex class, have hitherto found it most difficult to define satisfactorily the meaning of the term, and to analyze the nature of the manifold problems presented.

The classification of the unemployed adopted by the Board of Trade does nothing to help us out of our difficulties; indeed, it hardly pretends to do anything. The term unemployed is said to be used in "four distinct senses, though of course the classes of persons corresponding to each definition overlap to a greater or less extent." These classes are summarized as follows:

1. "Those whose engagements being for short periods have terminated their last engagement on the conclusion of a job, and have not yet entered on another."

2. "Those who belong to trades in which the volume of work fluctuates, and who, though they may obtain a full share during each year of the work afforded by their industry, are not at the given time able to get work at their trade."

3. "Those members of various trades who are economically superfluous," because there is not enough work to be done.

4. "Those who cannot get work because they are below the standard of efficiency usual in their trades, or because their personal defects are such that no one will employ them."

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Evidently a workman might be included in three of these classes at the same time. But it would seem that the great object in classifying the unemployed must be the opportunity thus afforded for treating each class separately according to its needs. If this is true, classifications which do not classify can be of very little value.

It is interesting in this connection to note a kind of natural and unconscious classification, made largely by the unemployed themselves, that is revealed by various passages in the Board of Trade's *Report*. In the part dealing with European "labor colonies" it is stated that the

> colonies are not occupied by the worthy unemployed, but by those who have suffered moral as well as material collapse. . . .
>
> The hard-working man of reputable life who seeks the colony because he is out of employment is exceedingly rare, if indeed he exists at all. *The classes will not mix; to admit the one is to exclude the other.* . . . Seventy-six per cent of the inmates of the German colonies have been imprisoned.

These colonies seem able to reform only a very small proportion of their inmates, and evidence is fast accumulating that their great usefulness is as social pest-houses, where the vicious semi-criminal — the vagabond and human parasite — may be segregated from humanity, just as the victims of other contagious diseases are excluded from society. On the other hand, "labor bureaus" are usually successful in proportion to the care taken to select applicants for registration, and thus virtually to exclude the "chronically unemployed class." Employers will use these bureaus only when they feel confident of securing good workmen. Thus the fields of usefulness for labor colonies and labor bureaus respectively seem to be marked out by the inexorable logic of facts: for the former, social wreckage; for the latter the skilled laborers and the best[1] men among the unskilled. Between these two classes there is evidently another great class: the unskilled and often economically superfluous, but well-intentioned unemployed.

The great need of a wise classification of the unemployed is seen in connection with the "relief work" that is resorted to in times of special financial suffering. Hitherto most of such work has been secured by the "loafing and shiftless class, to the partial or total exclusion of the competent victims of trade fluctuation."

After a thorough description of "Permanent Agencies" and "Temporary Schemes" for dealing with the unemployed in Great

[1] Roughly determined by the ability to secure a testimonial of character from last employer.

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Britain and Ireland, the Board of Trade's *Report* concludes with an interesting investigation of "European Labor Colonies," by Professor Mavor of Toronto University, and reprints of several valuable historical documents, among others an account of the "Paris National Works of 1848," and John Locke's "Representation as to the Employment of the Poor" (1696), copies of which have been most difficult to obtain.

Mr. Drage's work, as appears from his own statement, would never have seen the light but for much valuable information culled by him from the *Report* just discussed. This being true, it seems strange that he should devote so much space to virulent criticism of that *Report*, which, while undoubtedly not without faults, is nevertheless a most useful publication.

When we consider what further excuse Mr. Drage's book has for being, we find that it contains an interesting summary of the present condition of England with regard to unemployment, a classification of the unemployed, a critical review of remedies suggested or adopted, and in conclusion Mr. Drage's own ideas as to the solution of the problem — ideas intended for the enlightenment of "the practical man, who is inclined to leave the theoretical and statistical side of the inquiry to professors and bureaucrats." Mr. Drage believes that "it is impossible to form any exact or even approximate estimate of the numbers of unemployed at any particular time," and that the only "practical method available" in England, "with existing data — is that afforded by the out-of-work returns of various trade societies, which may be taken as an index of the general condition of the labor market." In this connection he introduces a number of valuable charts.

Two main classes of the unemployed are distinguished — "those with whom want of employment is merely temporary, and those with whom it is permanent." Under the second class are two subdivisions, "though it may be difficult to determine to which a given individual belongs": (1) casual laborers whose work "possesses a certain economic value, but is as a rule unskilled and inefficient"; (2) "the unemployable, because through some physical or moral defect they are economically worthless." Great stress is laid upon the evil effect of rapid and capricious changes of fashion in producing unemployment, — changes which, Mr. Drage thinks, might to a large extent be prevented.

A permanent superfluity of labor exists almost exclusively among laborers possessed only of a low grade of skill, or of skill of a kind for which

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there is no demand. Unless this class acquires the skill necessary for some definite trade, the superfluity must, as time goes on, rather increase than diminish.

Mr. Drage hardly notices the strong and growing tendency in modern industry to throw men approaching old age out of employment almost irrespective of the skill they possess. This seems largely due to the fact that adaptability to change is one of the prime requisites in a modern industrial worker, and this quality is rarely possessed by the aged.

In discussing European labor colonies, Mr. Drage states that their chief usefulness is as "a receptacle for those who, if free, would prey upon society, and render means for relieving the deserving poor almost entirely futile." These colonies "have not shown that they are capable of reclaiming the colonists; moreover, in no case are they self-supporting." However, if introduced into England, Mr. Drage thinks such colonies may well undertake the task of discovering "what members of the permanently unemployed class are capable of being reformed." To this end the colonies

> should be required to be absolutely self-supporting. . . . Entrance must be voluntary and exit must be voluntary, but after a certain period has been allowed to elapse, during which a man may be supposed to have somewhat regained his normal vigor, workmen can only be suffered to remain in the colonies provided they are able to earn their maintenance.

But it is clear that if these colonies should be made free and voluntary, with little or no work required for a "certain period" after admission, the tramp and the "bum" would be likely to use them just as much as they do the German colonies, only their periods of stay would be shorter, and the community thus just so much the worse off. The self-respecting, honest unfortunate would not be found among such men; and if restrictions should be put upon readmission, it would result in keeping out worthy as well as unworthy. In another place, when reviewing the Board of Trade book, Mr. Drage favors two kinds of colonies, "one for the discharged prisoner, the vagrant and the loafer on the open principle, and another for the worthy unemployed on the principle of selection, or at least investigation"; but he admits that such investigation would involve delay and "numerous practical difficulties." Mr. Drage does not seem consistent in this matter.

In the concluding chapter the usual result is reached, that "no one heroic remedy can afford a practical solution of the problem of

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the unemployed," but that we must trust to "a series of lesser remedies" scientifically applied.

> The existing stock of temporarily and permanently unemployed must be eliminated; the recurrence of the problem of men thrown temporarily or permanently out of work must be prevented; and industry must be so organized as to assist the circulation of labor in accordance with the demand for it.

Unemployment being a national and not a local problem, it is "necessary that the problem as a whole should be grasped, though not dealt with, by one body;" accordingly "a special group of experts is needed" for general oversight and coördination of the actual work, which must be left largely in the hands of local agencies.

COLUMBIA COLLEGE. A. CLEVELAND HALL.

Trusts or Industrial Combinations in the United States. By ERNST VON HALLE, Ph.D. New York, Macmillan & Co., 1895. — xiv, 350.

This little book is the best handbook that we now have concerning industrial combinations in the United States. The titles of the chapters show well the scope of the work: (1) Earlier Public Policy as to Combinations; (2) Condition of Affairs before the Interstate Commerce Law and Anti-Trust Legislation; (3) Forms of Organization; (4) Objects of Organization; (5) Nature and Effects of Trusts; (6) The Latest Phase of Corporation Law and its Effect on the Form and Nature of Combinations; (7) Public Opinion and the Combinations; (8) Conclusion. For those who are fairly well read in the trust literature of the last four or five years, not the least valuable part of the book is to be found in the sixteen appendixes which make up more than half of the book. These appendixes include the trust agreements, by-laws, *etc.*, of the Standard Oil Company and the Reading Coal Combine, the reorganization contract of the Cotton Oil Trust, the charter of the Distilling and Cattle-Feeding Company, and other interesting forms of agreement or by-laws, besides the anti-trust laws of the United States, Illinois and Texas. Appendix XVI contains what is probably the best bibliography of the subject that has yet been published.

In discussing so broad a subject in so brief a space, it has been necessary for the author to assume that the reader has considerable knowledge of the general nature of corporate business, somewhat technical terms being used from the outset with no explanation. The author is familiar with practically all of the late literature on the subject, and

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in addition to knowledge gained from it, he has availed himself also of a great deal of information given him in private conversation by managers of several of the leading trusts and combinations in the country. In setting forth the facts and opinions thus gained, great care has been employed, and I have found no statement that is inaccurate, and only one that is at all misleading. On page 89 there is an implication that the speculation in the stocks of the great corporations by their managers has been mainly with the companies' funds; and it is implied, perhaps rather by omission than otherwise, that there has been little private speculation by the managers in stocks owned by themselves personally. The late developments regarding the Whiskey Trust seem to show that the latter practice, rather than the former, is responsible for the present unfortunate condition of that company, and the common belief is that the manipulations of the Sugar Trust stocks are of the same character.

In his general treatment of the subject the author has been eminently fair-minded. If he errs at all in this regard, it would seem to be rather in favor of the trusts than otherwise. Though he recognizes that they may well become in many respects an evil in industrial society, he still thinks that on the whole they are but a step in our industrial development and that they cannot be done away with. He believes that the repeal of the present anti-trust laws would be desirable, and for the control of combinations he looks rather to the creation of a commission similar to the Interstate Commerce Commission than to more radical measures. It is of especial interest to Americans to see that so well read and competent a foreign observer as Dr. von Halle — one, moreover, who has had the opportunity of forming a very careful judgment regarding our industrial affairs — should apparently have reached so hopeful a conclusion regarding the power of the American people to push on toward better industrial and political conditions. He recognizes the fact that our industrial prosperity is largely dependent upon political action, but seems to believe, with Professor Bryce, that the American people will by and by realize the meaning of present facts and adapt their action to the necessities of the time. Despite the present unsatisfactory control of monopolies by the government, he believes that ultimately the people will equip themselves with the "administrative machinery of a reformed civil service," and that the corporate character of our industrial organization can then be well controlled by public supervision.

JEREMIAH W. JENKS.

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Sir William Petty; a Study in English Economic Literature. By WILSON LLOYD BEVAN, A.M., Ph.D. Publications of the American Economic Association, Vol. IX, No. 4. Baltimore, 1894. — 102 pp.

It is unnecessary to emphasize the change wrought by Adam Smith in the spirit of English writing upon economic subjects. His predecessors, with the possible exception of Sir James Steuart, attempted no comprehensive survey of industrial society; they took up practical problems concretely and severally, considering them rather with reference to government initiative than to individual enterprise, viewing them from the standpoint rather of national strength than of industrial prosperity. Among Smith's successors, on the other hand, scarcely one has attained in "scientific" estimation to the first rank, who has not produced sooner or later a "system," or at least a "treatise."

The task of an historian of economics who seeks to present to a modern audience the notions of a seventeenth-century writer has thus become complex. Shall he conform his treatment of Petty, for example, to his audience or to his subject? To follow the former course requires that Petty's ideas be presented systematically, or at least topically, and that the topics be selected and to some extent grouped according to a nineteenth-century conception of them. The advantages of this course are patent: the writer has a ready-made standard for judging Petty's notions, and the reader, at any rate the modern reader, finds prompt answer to the questions that he is likely first to ask. The disadvantages are less obvious, but not less real. They are involved in every such attempt to study a thing before it began as if it had already begun; they may lead to inquiries as to what Petty thought about problems concerning which, in all probability, it never occurred to Petty to think at all. No possible answer to such questions can be correct, for the questions are themselves irrational.

If the historian attempt to follow the second course, and conform his treatment to his subject rather than to his audience, he will find himself forced to study and to discuss each economic problem in the light in which it presented itself to the writer under consideration. This is probably the sounder method, and, as recent studies of Ricardo have shown, it is capable, in competent hands, of affording results of great value. It has, however, a considerable drawback, inasmuch as the historian must supply the industrial *milieu*, which, for a remote period, at any rate, the reader cannot be expected to

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construct for himself. And the difficulty of putting the reader in touch with the period under discussion increases, generally speaking, in proportion as that period is remote.

Dr. Bevan's study is not confined to Petty's economic theories. It opens with two chapters on his life (1623–1687), followed by a third devoted to his "Advice to Samuel Hartlib for the Advancement of Learning," and to the "Observations upon the Bills of Mortality." The question of the authorship of the "Observations" is too complicated for adequate discussion here. Dr. Bevan rather summarily assigns them to Petty. The probability has seemed to most investigators overwhelming that the "Observations" were written, as they purport to be, by Petty's friend, Captain John Graunt; and it is not plain that Dr. Bevan has adduced any new evidence of weight on the other side.

The more specifically economic portion of the study is contained in the fourth and fifth chapters. Here Dr. Bevan takes up successively Petty's notions of land, labor, value, rent, money and taxation, closing with a sixth chapter on "Petty in relation to contemporary England, and his place in economic literature." To such topical treatment Petty, who elaborates his concepts with a care unusual among seventeenth-century writers upon economic subjects, is perhaps better suited than any of his contemporaries. Nevertheless, even with the help at critical points of a guide like Roscher, Dr. Bevan has not entirely succeeded — it was perhaps impossible that he should entirely succeed — in avoiding the dangers which beset his chosen method. In taking up Petty's views of labor, for example, he lays more emphasis on the discussions of the differences between laborers, and less on the discussions of their aggregate number, than does Petty himself. Similarly Petty's ingenious attempts to determine the amount of rent are treated at greater length than is his view of rent as the measure of the social surplus, and hence the chief criterion of industrial prosperity. It is true that Petty was, at these as at many other points, nearer to modern views than were most of his contemporaries; but he was by no means so near, it seems to me, as the reader of this study is almost certain to infer. When, for example, Dr. Bevan says (page 98) that "Petty would quite agree with Ricardo's definition of rent as the payment for indestructible powers of the soil," he makes a futile assertion, which it is equally impossible to establish or to controvert; and, what is worse, he risks leaving upon the reader's mind the erroneous impression that Petty's attitude towards the landlord's share was

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somehow like Ricardo's. Other examples might be adduced; but these will suffice to illustrate the point. Faults of this sort are almost inseparable from the method employed, and Dr. Bevan has perhaps fallen into them no more frequently than other writers who have attempted like tasks.

There is, however, another characteristic of Dr. Bevan's study which may not pass unnoted. In details it is frequently inaccurate to a degree that must detract somewhat from its value. Not only would it be tedious to specify the fourteen mistakes in the bibliography of Petty's printed writings, or to enumerate a long list of such slips as "a broadside of four pages," "Graunt's death in 1673" (he died April 18, 1674), "Sir Joshua Child," "Samuel Hartlieb," *etc.*, but it would also be peevish to call attention to such trifles, were they not typical of a laxity that extends to more important matters. For example, Dr. Bevan says (page 49) that the "Observations" make "the astounding statement that London doubles its population in eight years." Graunt really says: "in eight times eight years." Again, on page 88 we read: "Granting the correctness of his [Petty's] estimate of the population of England, his assumption that the population of a country always increases in the same ratio is one whose falsity he should have seen." He did see it, and in the very preceding paragraph he guards his statement thus elaborately: "We do for the present, and in this Countrey admit of 360 Years to be the time wherein the People of *England* do double, according to the present *Laws* and *Practice* of *Marriages*" (Petty's own italics). Manifestly it is not Petty who has committed the oversight here. Once more — and this shall be the last example — Dr. Bevan places side by side several passages from Petty and from Adam Smith, to show wherein Smith was anticipated by Petty. One of the cases is the following, the italics being Dr. Bevan's:

> [Smith:] The rent of a house may be distinguished into two parts, of which the one may very properly be called the building rent, the other is commonly called the ground rent.
>
> The building rent is the interest or profit of the capital *expended* in building the house. . . . This surplus rent (the second) is the price which the inhabitant of the house pays for some real or supposed *advantage* of the situation.
>
> [Petty:] An house is of a double nature, *viz.*, one wherein it is a way and means of *expence*, the other as it is an instrument and tool of *gain*.

Each of these brief extracts needs to be considered in connection with the argument of which it forms a part. Smith calls attention

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to the recognized distinction between ground rent and building rent, in order to discuss the incidence of a tax on gross rent collected from the occupier. The "capital expended" is the house-owner's; the "advantage" is the landlord's. Petty's argument is concerned neither with landlord nor with owner; the "expence" and the "gain" are the expense and the gain of the tenant. That this may become apparent, Dr. Bevan's brief quotation from Petty must be completed:

> For a shop in *London* of less capacity and less charge in building than a fair Dining-Room in the same House unto which both do belong, shall nevertheless be of the greater value; so shall also a Dungeon, Sellar, then a pleasant Chamber; because the one is expence, the other profit. [Treatise of Taxes and Contributions, 1662 ed., p. 22.]

Petty elaborates this idea to show that the tax is unequal in its imposition; with its incidence he is not here concerned. He considers the tax unequal because houses of like cost of production — "charge in building" — have, according to his general theory of value, like true or "intrinsic" values, and should be taxed like amounts. But such houses are of greater (market) value when used as tools of gain than when consumed in the "way and means of expence." The diversity between Smith's and Petty's points of view comes out even more clearly if their arguments be followed a little further. Smith goes on to say that the builder must have average profits, and that more or fewer houses will be erected, according as the profit on existing houses is above or below the average. Petty's argument is essentially different, because he had in mind the condition of the building trade in London after the Restoration, when, as he almost immediately remarks, the erection of new buildings, if not absolutely forbidden, was at least greatly restrained by statute. In other words, Petty and Smith are, for different purposes, looking at different aspects of building rent, arising out of different industrial conditions. Smith, in the course of his discussion, chances to use a sentence which shows a verbal coincidence with a sentence of Petty's. This coincidence is described as "a small but interesting resemblance." One may agree in part: the resemblance is small — but is it interesting?

Judged by the economic standards of his time, Petty was an able thinker. Much of his work has an historical interest; some of it is valuable even at the present day. To make him better known to students of the history of economics than as yet he is, was a happy thought. It is unfortunate therefore that this, the first large mono-

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graph by an American student upon one of the ante-Smithian economists, fails in important respects to meet the expectations raised by the circumstances of its publication.

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La Teoria del Salario nel Concetto dei Principali Economisti. Di ALDO CONTENTO. Milan, Fratelli Dumolard, 1894. — 374 pp.

The author of this painstaking volume is a professor in Venice, at one of the many technical schools in Italy, which correspond to the German *Realgymnasia.* He is one of the younger generation of Italian economists, whose number and activity show that there is no relaxation in that striking growth of economic science which is among the fruits of the regeneration of Italy.

The book divides itself into three parts. First, a general or introductory part, in which there is very brief consideration of a wide range of topics, — the nature of labor, the law of demand and supply, the difference between labor and commodities, and other like topics. Next, a special part, where the views of various writers of all nations on labor and wages are explained and criticized. Last comes a conclusion, in which the author summarizes his own views, already set forth more or less in the course of his criticisms on the views of others. By far the largest space is given to the second part. Here we have successive chapters discussing the theory of wages at the hands of the English, the Germans, the Austrians, the French, the Italians and the Socialists. The book is thus made up mainly of summaries and criticisms of the views of these various writers.

The historical work is neatly and in the main accurately done; but it can hardly pretend to be exhaustive, and even within the limits inevitable from the treatment of a large subject in brief space, it gives no evidence of special insight or great gifts of interpretation. There are smooth and straightforward summaries of the more prominent passages in the writings of the various authors on the theory of wages. But — to cite only the classic writers — Adam Smith and Ricardo and Mill are by no means discussed with full appreciation of their position in the development of thought. Ricardo did much more to establish the doctrine of the wages-fund than Professor Contento gives him credit for — or discredit, as the reader may prefer; while the younger Mill, to whom our author ascribes "the first true exposition" of that doctrine, did no more than to set forth

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what was common property in his day. In the selection of the writers, again, and in the allotment of space to one or another, there is room for criticism. Among the Germans four writers only appear, and in this haphazard order: Roscher, Hermann, Mithoff and Thünen. The Austrians are represented by Böhm-Bawerk alone; the Socialists by Marx and George — a curiously ill-assorted pair. Adam Smith, Ricardo and the younger Mill get less than half a dozen pages apiece; Loria gets twenty-five, and Ricca-Salerno and Pantaleoni ten apiece. If this generous attention to the Italians is the natural result of the author's interest in the work of his countrymen, it is still surprising to find recent French writers, like E. Chevalier, Beauregard and Villey, who have made no contribution to the subject one way or the other, in possession of a large part of his pages.

The wages-fund doctrine is the main subject, though natural wages, the cost of production of labor, and other such topics, get a share of attention. Professor Contento's position is distinctly conservative. He denies that wages are paid from product or depend directly on the productiveness of labor, and maintains that they come from the capital of employers, though not from any inelastic or rigidly predetermined fund of capital. He professes openly to be a disciple of Cairnes, and accepts, with no serious qualification, the theory of the wages-fund as recast by that writer. Cairnes, in fact, has evidently had more vogue and more attention in Italy than he has received elsewhere on the continent. Indeed, it is curious that both Cairnes and Walker, who are comparatively little known to the omnivorous Germans, have been much read and discussed by the Italians. But as to the merits of the controversy whose opposite sides are represented by these two writers, opinions seem to be divided in Italy quite as much as elsewhere. The reader of this review of the literature of the subject, whether or no he accepts the author's conclusions, must be impressed by the absence of any consensus of opinion among economists.

Professor Contento disarms criticism on his own views by the modesty of his preface, in which he tells the reader that he professes to present no complete work and to add no new doctrine. The reasoning and the conclusions of Cairnes, which he has adopted, have never made their way to general acceptance, nor are they likely to. What Cairnes said was an effective answer to the more salient parts of the criticisms put forth on the old doctrine by Longe and Thornton, but as an independent exposition it is far from complete

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or satisfactory. The subject still remains largely in suspense, and still awaits a definitive solution. At all events, such a solution certainly is not found in this volume.

F. W. TAUSSIG.

HARVARD UNIVERSITY.

Traité d'Économie Sociale, ou l'Économie Politique coordonnée au Point de Vue du Progrès. Par A. OTT. Deuxième édition, entièrement refondue et mise au courant. Paris, Librairie Fischbacher, 1892. — 2 vols., 1012 pp.

It is very difficult to give an adequate conception of the pretensions of this cyclopædic work. It is an interesting mixture of economics, ethics, theology and history. First of all we are told: "Economic science has not then simply to state laws and facts; it has above all to solve problems. Hence it is not enough for it to state *what is*, but it must also teach us *what ought to be*, and how what *is* may become what *ought to be*." It is this which the English school of economists have failed to understand. Moreover, "social and individual preservation, the realization of liberty and equality, are not simply scientific opinions, left to individual acceptance; they are moral duties, imposed upon humanity by a will superior to its own."

Economics, ethics and religion, thus bound together in indissoluble hierarchy, have found more and more perfect expression in the industrial and social institutions of successive historical epochs. Christianity has now presented to humanity the final goal of its efforts, — "fraternity of all men and all peoples, under the laws of liberty and equality." This ideal, having already transformed the political and civil constitution of modern nations, is now to be realized in the economic order. Upon society rests the responsibility of choosing either the way of peace and order or that of violence and revolution.

Social economy, then, is "the science which aims to organize labor with a view to the highest welfare of society and of the individual and the realization of liberty and equality." Obviously such a science will not proceed in the beaten track of economic inquiry. Moral considerations will come before material. "Seek first the kingdom of God and his righteousness and all these things shall be added unto you," supplants the materialistic postulates of the classic economics. Instead of the conventional division into production and distribution, we shall ask: What are the occupations and products necessary or useful for social and individual welfare and

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the attainment of liberty and equality? What methods and conditions of labor are most appropriate to this end? How ought labor to be distributed among individuals, with a view to liberty and equality? How ought the instruments of labor to be distributed from the same point of view? What is the best general method of distributing products? How ought the product to be applied to social welfare? How ought individual welfare to be secured? The answers to these seven questions constitute the seven books of Part I and occupy a large part of both volumes. Four other questions suggested by the relation of economic facts to the social phenomena furnish the titles of the four brief chapters constituting Part II, at the end of the second volume: Inventions, International Trade, Laws of Population, Charity.

An examination of the present industrial order in the light of these questions, leads to an indictment which enumerates nearly all the familiar charges brought against society by classic, radical or socialistic critics. There is nothing original in this indictment and it need not detain us. The conclusion is that all the evils indicated flow from two fundamental causes: (1) the laws which regulate the distribution of the instruments of labor; (2) the absolute freedom and the absence of all prevision in production and exchange. Two great problems, therefore, present themselves: first, to destroy the inequality which exists in our economic order, so that demand will correspond to real need; and second, to establish prevision and order in production — that is, to proportion production to demand. These two problems comprehend the whole of social economy.

The remedy proposed is association, which, "by giving the instrument of labor to the laborer in proportion as he is a laborer, will destroy at a blow all the deplorable effects which result from the existing distribution." It will liberate the workman, rescue him from his inferiority, give him the entire fruit of his labor, and enable him to take his part in the production of things agreeable and useful. It will secure for all liberty in the choice of occupation. It will transform demand, and consequently the distribution of labor and of production in general. At the same time it will correct some of the disorders born of unlimited competition, — by making trade and production more regular, by banishing speculation, by assuring a market.

The obvious objection to this solution is that association — productive coöperation and all the rest — has been tried and found wanting. The failure is admitted by the author, who ascribes it to lack of moral

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sentiment among laborers, and to the opposition of the "all or none" type of socialist or collectivist reformers. Moreover,

> it is beyond doubt that association presupposes moral conditions superior to those demanded by individual labor; a man needs more morality, more intelligence, a higher conception of duties, to work harmoniously with others, than to work by himself. Unhappily it is also certain that the majority of workingmen are far below this moral plane. But provided a minority of them — and even a small minority — have reached it, it is enough.

The friends of association are therefore called upon to gird up their loins. State discriminations in favor of association are justified; but state loans are not needed. On the other hand, private benefactions for the encouragement of coöperation, such as that left by M. Rampal to be administered by the municipality of Paris, are to be encouraged. Legislative restrictions upon freedom of organization should be removed; government contracts should be open to bids from such associations; there must be no limit as to membership; all employees must be included; profits must not be distributed on capital. Without these precautions coöperators will inevitably become "employers" and revert to the capitalist organization they start to cure. Profit-sharing is a step in the right direction. It is welcomed for its own sake as an ameliorating agent; but especially as a transition to workingmen's associations.

Besides "association," the author demands, as complementary and partly transitional measures, the organization of credit; modification of the law of inheritance; a minimum rate of wages; fixed rents; a reform of our system of taxation, notably by the creation of a progressive income tax; institutions of *prévoyance* connected with institutions of credit; trade unions; the organization of technical education; and repressive measures against excessive competition.

Such a treatise has an obvious interest as illustrating a method of approaching the problems of social economics. It presents all the elements of strength and of weakness. There is something hopeful in the mental attitude which recognizes the necessity of prefacing each new phase of a discussion with a segment of universal history, running from that portion of the ever-widening periphery of social phenomena known as the "present state of the problem," back to that limbo-center of all things, primitive society. But these pie-shaped segments of universal history make enormous demands upon the digestion of the critical reader and almost equally exorbitant claims upon the purely receptive student's confidence in the omniscience and impartiality of the author. Indeed, the suspicion fre-

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quently suggests itself that these historical prefaces are to be regarded not as light thrown upon obscure problems by research, but as the historical shadow which reconstructive theories are apt to project into the past.

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The Lowell Lectures on the Ascent of Man. By HENRY DRUMMOND, LL.D. New York, James Pott & Co., 1894. — xi, 346 pp.

The fundamental fallacy of Kidd's *Social Evolution* lies in the assumption that all acts not purely selfish are "ultra-rational," or in other words, irrational. In *The Ascent of Man* it is shown that altruism is neither irrational nor supernatural, but is a necessary factor in the development of society and is capable of scientific explanation. The thought is not altogether new, but it has never before been so thoroughly well demonstrated.

It is almost axiomatic that society could not exist without altruism. Even the simplest forms of coöperation or mutual aid would be impossible, unless the individuals concerned had some regard for each other. Association presupposes some degree of unselfishness. But if altruism is a necessary social function, it should be possible to explain its origin and development by natural causes, just as the biologist explains the development of an organ by showing the necessity for its use. And so Professor Drummond explains the growth of altruism as a part of the process of evolution, conforming to the law of the survival of the fittest. He finds the origin of altruistic feeling in maternity, and shows that the devotion and rudimentary self-sacrifice of both primitive parents must have been favorable to the survival of their offspring. Thus altruism, or "the struggle for the life of others," arose necessarily out of the function of reproduction; and, beginning in the family, it gradually extended to embrace members of the clan, the tribe, the nation, the human race.

Professor Drummond contends that the "struggle for life" has been over-emphasized, at the expense of the other factor in evolution — the "struggle for the life of others." He says:

> The first step in the reconstruction of sociology will be to escape from the shadow of Darwinism — or rather, to complement the Darwinian formula of the struggle for life by a second factor which will turn its darkness into light.

The Ascent of Man would be significant as an answer to *Social Evolution*, even if it contained no reference to Mr. Kidd's peculiar

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views. The two works were published at nearly the same time; but *Social Evolution* appeared just long enough in advance to allow Professor Drummond to embody an answer in express terms in his Introduction. Mr. Kidd's conclusions, he says,

> show the impossible positions to which a writer, whose contribution otherwise is of profound and permanent value, is committed by a false reading of nature. Is it conceivable, *a priori*, that the human reason should be put to confusion by a breach of the law of continuity at the very point where its sustained action is of vital moment? The whole complaint, which runs like a dirge through every chapter of this book, is founded on a misapprehension of the fundamental laws which govern the processes of evolution. The factors of Darwin and Weismann are assumed to contain an ultimate interpretation of the course of things. For all time the conditions of existence are taken as established by these authorities.

And again:

> To put the future of social science on an ultra-rational basis is practically to give it up. Unless thinking men have some sense of the consistency of a method, they cannot work with it, and if there is no guarantee of the stability of the results, it would not be worth while. But all that Mr. Kidd desires is really to be found in nature. There is no single element even of his highest sanction which is not provided for in a thorough-going doctrine of evolution. . . . . When evolution comes to be worked out along its great natural lines, it may be found to provide for all that religion assumes, all that philosophy requires and all that science proves. . . . . For nothing can ever be gained by setting one-half of nature against the other, or the rational against the ultra-rational. To affirm that altruism is a peculiar product of religion, is to excommunicate nature from the moral order, and religion from the rational order.

Perhaps the greatest service which Professor Drummond has rendered to the world lies in thus popularizing the conception of universal evolution.

MAX WEST.

UNIVERSITY OF CHICAGO.

Social England. Edited by H. D. TRAILL. Vol. II: From the Accession of Edward I to the Death of Henry VII. New York, G. P. Putnam's Sons, 1894. — 587 pp.

In a review of the first volume of this work (POLITICAL SCIENCE QUARTERLY, September, 1894), sufficient was said concerning the merits and demerits of the undertaking as a whole. Professor Maitland continues to give us his learned, yet graceful and witty, little essays on legal history; Mr. A. L. Smith hands on, with cautious

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judgment, the Stubbsian tradition; Mr. Hubert Hall reveals the symmetry of the mediæval customs administration; Mr. W. H. Hutton writes upon the church with the sympathy of a humanist theologian born out of due time; Mr. R. L. Poole speaks with unapproachable authority on Wycliffe; and many other specialists, like Mr. Creighton and Mr. Oman, discourse on their several themes — untroubled by much concern for the opinions of their fellow-contributors. Of course it is a work that every fair historical library ought to have.

Such a book it were idle to attempt to criticise in detail. But it suggests the advisability of once more calling attention to a matter which has already been touched upon in these pages, in notices of the works of Thorold Rogers and Professor Cunningham, but which would seem to need constant reiteration. To Mr. W. J. Corbett have been assigned the sections on "Agriculture"; and he has produced for us some pleasantly written and suggestive pages. It falls to him to deal with the Black Death of 1349, and the Peasant Revolt of 1381; and, although their importance has doubtless been exaggerated, an adequate judgment concerning them certainly involves an intimate knowledge of contemporary conditions. But — most unfortunately, considering how many will learn their history from these pages — Mr. Corbett does but reproduce the theory of Thorold Rogers, with no attempt to supply for it the evidence which the master himself never adduced. After describing (page 98) the large extent to which labor dues from the villeins to their lords had been commuted for money payments, he explains the Peasant Revolt by the determination of the landlords "to revert wholesale to the personal services of former times" (page 246). It will hardly be believed by the reader that for this assertion there has not yet been produced a tittle of positive evidence. Yet here the argument *a silentio* is surely in place. Our evidence for the fourteenth century is not as complete as we should like; but it is considerable in bulk. Mr. Corbett hardly realizes what a big thing it is that he follows Mr. Rogers in imagining. It is inconceivable that, in those centuries when precedent so quickly became custom, scores of masters should have sought to disturb habits in their tenants of twenty, fifty, a hundred years' standing, and yet no trace of the "desperate expedient" should have come down to us. Doubtless services still uncommuted were more rigidly exacted, and there was, as a contemporary poet says, "a bitterer bid to the boon"; but this is very different from a "wholesale reversion" to "works" long since exchanged for "rent."

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The causes of the rising were of course complex; but any one who will read through the accounts Walsingham gives us of the troubles of the convent of St. Albans with its tenants, will find there a picture of the situation in the rural districts most affected which needs no extraneous theory for its explanation.

The source of some other misapprehensions of the agrarian history of the fourteenth century which are evident in Mr. Corbett's narrative, is the failure to remember that rough-and-ready distinction between "laborers" and "tenants" which is drawn even by the statutes. Speaking in general terms it may be said that "laborers" did not take the place of "tenants" except in providing labor for the lord; they grew up beside them (being probably, in large part, identical with the "cotters"). The Statute of Laborers did not touch the substantial tenants; it touched only those who "had not of their own whereof they might live, nor proper land about whose tillage they might themselves occupy." The Peasant Rising, on the other hand, *was*, in the main, as Walsingham and Froissart and the Charters of Manumission sufficiently show, a rising of tenants. Accordingly "the increasing stringency of the Statutes of Laborers," to which Mr. A. L. Smith in part attributes the rising (page 153), had nothing directly to do with it, in the sense most readers will attach to his words; nor can it, as by Mr. Corbett, be called "the first struggle on a large scale between capital and labor in England" (page 252), without an undue straining of language.

One word more on another topic, already touched upon here (VI, 565), in reviewing Dr. Gross' *Gild Merchant.* Mr. Hubert Hall, in a section otherwise valuable and freshly thought out, goes beyond even Dr. Gross in believing it "probable" that at first "craftsmen formed in most towns a *majority* of the gild brethren," *i.e.*, of the merchant gild (page 110). It would be well if we could be shown the grounds for such an assertion: to the present writer, at least, it seems hard to fit it into what we know of gild history in England and elsewhere. And the further statement that "membership in the gild conferred the freedom of the borough and the legal status of burgess," is hardly reconcilable with the impression we get from the records, which is that, except in the case of lords of manors or heads of religious houses *outside* the town, the gild merchant was primarily an association *of* burgesses, *i.e.*, of persons who were already burgesses before they entered the gild.

W. J. ASHLEY.

HARVARD UNIVERSITY.

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Wealth and Moral Law. By E. Benjamin Andrews, D.D. Hartford Seminary Press, 1894. — 135 pp.

The lectures included in this little volume raise and discuss the largest and most troublesome of social issues. The book is true to its title. Trusts, corporations, gambling, justice, socialism and the single tax, each and all, are regarded from the economic and from the moral standpoint. The distinctively moral remedies predominate; and though they run dangerously near to that familiar commonplace, "Get the right sort of behavior and no problems will remain," yet there is not a dull page in the book. As in the other writings of Dr. Andrews, no trait is more constant than a certain moral fearlessness in dealing with his theme. Intellectual sympathy also never fails him. Whether he deals with the Marx socialism or the single tax, there is always a distinct friendliness in stating what may be finally rejected. If this is a possible weakness, it is also a source of real strength.

The book contains no stated theory of the relation which morals sustain to economics, but it is everywhere assumed that the relation is constant. There is hardly a concrete issue raised which is not made to depend ultimately upon the sort of character available to control the issue. "Give us the right kind of men and any scheme will work." With a host of conservative writers this has come to be a very dreary commonplace, in spite of its truth. No higher tribute can be paid to Dr. Andrews than to admit that he wholly rescues it from dullness. "We must get character first before any important social changes can take place," is just now the stop-gap argument, ignoring wholly all that change of organization may imply as a character-creating force.

The author is very careful to make large allowance for this by his general remedy — regulation, as against *laissez faire* upon the one side and socialism upon the other. It is made clear that bold and yet prudent regulation of social evils must at least be fairly tried before the socialistic program can have serious hearing. Principles are indeed laid down which would seem to put the author into permanent antagonism with anything like scientific socialism, as "economic merit" is found to inhere in wage-earning, interest-earning and profit-earning forms of private property. The Marx type of socialism is refuted chiefly by showing reasons why the cost-of-production theory will not hold. Average labor cost, or any of its multiples, is shown to be far less certain as a measure of values than the rough decisions of the present competitive tests.

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With Fabian socialism the author has far more sympathy, although upon the main issue a sharp difference appears.

> The presupposition of this doctrine [that of the Fabians] is in favor of state industry. I would take precisely the opposite ground. Let us retain the immense advantages of individual initiative with the accompanying results of maximum enterprise and inventiveness, wherever such initiative is not erected into an abuse of society. Let us resort to state agency only when, and so far as, this is rendered necessary by the power and disposition on the part of individuals and private corporations to maltreat the public at large.

It is denied further that this would lead to the same practical results as the Fabian program, it being implied rather that experience will show very questionable results from too wide an activity on the part of the state.

JOHN GRAHAM BROOKS.

CAMBRIDGE, MASS.

Gouverneur Morris. By THEODORE ROOSEVELT. [American Statesmen Series.] Boston and New York, Houghton, Mifflin & Co., 1893. — x, 370 pp.

That Gouverneur Morris stands in only the second rank of American statesmen, is freely conceded by Mr. Roosevelt. But it is a sound judgment that has assigned a sketch of Morris to a place in this series. His position in the politics of our earliest national life can be made to throw much light on the period in which he lived, and therefore is historically important. This position is very fairly set forth in the present work.

It is unfortunate, however, that the positive, dogmatic element in Morris's character awakens the corresponding chord in his biographer. In the first half of the book, where the career of his subject does not lend itself readily to the requirements of a fascinating narrative, Mr. Roosevelt seems to feel the necessity of compensating for the deficiency. The result is a series of interjected reflections in which chauvinistic patriotism is rather more conspicuous than relevancy. The series begins (pp. 4–7) with a vigorous denunciation of England's treatment of her American subjects. The Americans "warred victoriously for the right"; and the British were like the Catholics in the sixteenth century, and the Stewarts in the seventeenth, and the Confederate slave-holders in the nineteenth. Mr. Roosevelt's perfect acquaintance with the ultimate standard of "right" and "wrong," and the easy confidence with which he deals out

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judgments on questions that occur, are the striking features of his writing here as elsewhere. So we find on page 29 that the "loyalists of 1776 were wrong . . . beyond question"; but naturally, not so frightfully wrong as the rebels in 1861. On pages 49–52 we see the absurdity of attributing the success of the Revolution to foreign aid. "It was on our own strength that we had to rely." We had our weaknesses, but in spite of them we were a great people; only it will not do to think that we had then anything like the magnificent qualities we displayed during the Civil War and have now. "But if the Americans of the Revolution were not perfect, how their faults dwindle when we stand them side by side with their European compeers!" The English were bad enough, in all conscience.

> As for the other European powers, the faults of our leaders sink out of sight when matched against the ferocious frivolity of the French noblesse, or the ignoble, sordid, bloody baseness of those swinish German kinglets who let out their subjects to do hired murder, and fattened on the blood and sweat of the wretched beings under them, until the whirlwind of the French Revolution swept their carcasses from off the world they cumbered. [Pages 82–83.]

The force of this passage is marred only by the uncertainty in which the reader is left as to whose carcasses are referred to.

On pages 131–132 the author explains "the one great reason for our having succeeded as no other people ever has." The reason itself is not so important as the comfort to be found in the assurance that we *have* so succeeded, and in the knowledge as to just the volume and page where we may read in concise form how it happened. On pages 136–138, the great superiority of our constitutional convention to that of France is duly set forth. So the constitution produced "was not only the best possible one for America at that time, but it was also . . . *probably* the best that any nation has ever had." The word I have italicized is the only indication in the book of a faltering judgment on any point.

Not even in denouncing dogmatism does Mr. Roosevelt cease to be dogmatic. "It is simply idle folly to talk of suffrage as being an 'inborn' or 'natural' right" (page 149). But the people who talk that way merely put forward "nature" to take the responsibility for what is really their personal private conviction. Mr. Roosevelt prefers to express his convictions as absolute truth, without the authority of nature. Perhaps it is not so much in the distinction as in the resemblance between him and the natural rights people that the "idle folly" is to be found.

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The latter half of this work, particularly the part dealing with Morris's European experiences, is interesting mainly for the view given of social conditions in the better classes at the outbreak of the French Revolution. In these chapters the author has less occasion for patriotic digressions. The opportunity recurs, however, in connection with the War of 1812 and Morris's Federalistic sympathies. Here the old fervor breaks out again; the French and English are berated in swelling terms, and scathing censure falls upon the New England separatists of the Hartford Convention.

Mr. Roosevelt has a clear head and a good historic sense. There seems to be a profound conviction of duty back of the style of writing which he adopts. He appears to feel that the nation is in peril if the good old-fashioned "stump-speech" patriotism is allowed to die out. Admirers of his ability would be gratified if he would embody in a book for boys all the matter of this sort that he deems necessary, and would give to adults the benefit of a different vehicle for his historical learning.

WM. A. DUNNING.

London and the Kingdom: A History derived mainly from the Archives at Guildhall. By REGINALD R. SHARPE. Printed by order of the Corporation under the direction of the Literary Committee. London, Longmans, 1894. — Two vols., xv, 566; xi, 650 pp.

The City of London is the only municipal corporation of England that has displayed much activity or interest in the investigation of its history and in the publication of its ancient records, though a few of the other boroughs (notably Nottingham) have recently bestirred themselves to make their muniments better known to the public. The City of London has not, however, always displayed wisdom in planning the work to be performed and in selecting the editors or authors to accomplish it. On the whole, Mr. Riley did good work, and the registers and records edited by Dr. Sharpe have given much satisfaction. Any one who has had intercourse with Dr. Sharpe in the dingy record room of the Guildhall knows that he has a knowledge of the records in his charge and a scholarly enthusiasm which go far to qualify him for the successful achievement of any historical work which the corporation of London may entrust to him. It is doubtful, however, whether the literary committee of the corporation have made the best use of their resources in directing his energies to the production of the book before us. London stands forth so prominently in the political annals of England that every historian of the king-

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dom must often survey events as if they were "seen from the windows of the Gildhall." Hence the facts of general importance recorded in Dr. Sharpe's first two volumes are for the most part familiar, though new details of much value are made known.

What is most needed in connection with the history of London and other English boroughs is the publication of more records. It is probably difficult for the average alderman or councilman of London to appreciate the importance of such publications. Most of these officials are practical men, who are probably not eager to spend money in literary work, unless some more or less practical object is to be attained. To glorify the City of London by showing its prominence in the struggle for freedom in past ages, may justify the expenditure of money for a literary undertaking; while the utility of printing dry records may seem very dubious in the minds of the city fathers. The London alderman will doubtless glow with civic pride when, in the work before us, he reads such utterances as the following:

> The spirit which had beaten back Swend and Cnut, the spirit which was in after times to make London ever the stronghold of English freedom, the spirit which made its citizens foremost in the patriotic armies alike of the thirteenth and of the seventeenth centuries, was now as warm in the hearts of those gallant burghers as in any earlier or later age. [Vol. i, p. 28.]

If, then, the most pressing want of historical students had been taken into account, Dr. Sharpe would have been asked to continue his publications of civic muniments. Next in importance to this stands the need of a good constitutional history of London — a clear account of the development of its municipal government. When Dr. Sharpe tells us, on page 144 of Volume I, that there was no royal *Iter* for nearly half a century after 1275, we naturally ask: What was done regarding the trial of crown pleas during this long interval? What was the organization of the civic courts? and What were their relations to the royal judiciary? Again, when the troops and gilds of the city are mentioned, we long for more information regarding the military organizations of mediæval London and regarding the relations of the gilds to the municipal government. Norton's *Commentaries on the Constitution of London* is still useful, but a better constitutional history of that city ought to be at our disposal. Such a work would satisfy an actual want, whereas *London and the Kingdom* does this, if at all, only to a limited extent.

Within the limits of the task assigned to him, Dr. Sharpe has succeeded in producing a well-written and tolerably accurate work.

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Some of his statements, however, are erroneous or doubtful. Thus in the first volume, the statement that Alfred founded the internal government of London (page 12), rests upon very meagre evidence, and the assertion that he established the system of frankpledge and that this system was carried further in the *Judicia Civitatis Lundoniæ* (page 14), is quite untenable. Our author says, on page 15, that the earliest mention of a gildhall in London occurs in these *Judicia;* but as a matter of fact, that document does not mention any gildhall. Is there any good authority for the statement, on page 27, that, according to Alfred's laws, the Witan were to meet in London twice a year for the purposes of legislation? We are informed, on page 60, that a man who underwent the water ordeal was declared innocent only in case "he sank to the bottom and was drowned"; but the contents of some of the early plea rolls indicate that a person might survive this test and be acquitted as innocent.

In dealing with the reign of Richard I, Dr. Sharpe would have found it profitable to make use of Mr. Round's essay on the mayoralty of London and of the introduction to Palgrave's *Rotuli Curiæ Regis*. Dr. Liebermann's valuable account of the *Leges Anglorum* throws much light on the relations of the Londoners to the Great Charter, but doubtless it was published after Dr. Sharpe's first volume had passed through the press.

The second volume extends to the year 1714; the third will complete the history of "London and the Kingdom," and will contain two Appendices, comprising a list of the city's representatives in Parliament from the earliest times and copies of important documents in the city's archives. I anticipate that these documents will be of considerable value.

CHARLES GROSS.

HARVARD UNIVERSITY.

The Meaning of History and Other Historical Pieces. By FREDERIC HARRISON. New York, Macmillan & Co., 1894. — 482 pp.

Shortly after the death of Professor Froude a few months ago, a strange rumor became current in the English and the American press that the Regius Professorship of Modern History at Oxford, the chair which had been filled in turn by Stubbs, by Freeman and by Froude, was to be filled by the appointment of Mr. Frederic Harrison. The rumor was a startling one: readers of Mr. Harrison's charming magazine articles failed to see in them any qualification for the

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holding of the most famous historical chair in England; and the tutors who for many years past have been building up the school of modern history at Oxford must have felt a thrill of indignation at the suggestion that they were to have as their professorial colleague the writer who recently in the pages of the *Fortnightly Review* grossly misrepresented their ideals and criticised their methods. It would have been, indeed, little less than a disaster for the spirit of scientific historical study in England if Mr. Frederic Harrison had been selected by Lord Rosebery to succeed Froude. Fortunately the danger was averted — indeed the rumor itself may have been entirely baseless — and Professor Freeman's intimate friend and deputy professor, Mr. York Powell, has been, to the satisfaction of all who are acquainted with his wide knowledge, his broad sympathies and his magnetic personality, chosen to fill the vacant chair. But the mere fact that Mr. Harrison's name was mentioned gives an added interest to this volume of reprinted magazine articles, which contains more than one chapter explanatory of Mr. Harrison's attitude towards history.

Of the seventeen essays contained in this volume, only four treat of history in the broader sense; the others are brilliant studies of Rome and Athens, and Constantinople and Paris, centennial articles on the French Revolution, a survey of the thirteenth century, studies on the new conditions of London and Paris, an appeal for the protection and preservation of ancient buildings, and the famous attack on "Palæographic Purism," which originally appeared in the *Nineteenth Century* in 1886. Of these miscellaneous essays it is unnecessary to say anything at the present time; when originally published, they attracted considerable attention, like everything Mr. Harrison writes, from the vivacity of their style, and they are excellent examples of the thoughtful reflections of a man of letters who has in his time read much history of men and things. Particularly striking are the articles on Constantinople, which abound in novel views and effective comparisons; but even Mr. Harrison himself could hardly have set forth these articles as justifying the mention of his name for a professorship of history. It is only upon the first four articles in the volume that Mr. Harrison's friends could base his claims to rank as a historian, and that, not because the essays show any evidence of historical work done, but because they express certain views upon history in general which might be regarded as proofs of fitness to direct the work of others. These four essays are entitled, "The Use of History," "The Connection of History," "Some Great

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Books of History," and "The History Schools: an Oxford Dialogue;" and in them can be found Mr. Harrison's conception of history, as well as an appreciation of the great historians of all time.

At the time when Mr. Harrison's name was being freely mentioned for the chair at Oxford the consensus of educated historical scholars opposed to his the name of Samuel Rawson Gardiner. It was an open secret that Mr. Gardiner might have had the professorship if he had desired it, and that he preferred to remain in scholarly seclusion in order to complete his history of the period of the Commonwealth in England. The two men were pitted against each other by partisans on either side, and they may be regarded as representing the two opposite schools. Mr. Harrison's brilliant survey of the whole domain of history, exhibited in a readiness to discourse upon ancient Egypt, upon the empires of the East, upon Greece and Rome, upon the Catholic church, upon the mediæval city, upon the French Revolution, contrasts markedly with Mr. Gardiner's sober concentration upon the history of England in the seventeenth century. Mr. Harrison's acute remarks upon the great historical writers of all ages, from Herodotus to Carlyle, showing as they do a quite exceptional knowledge of the secondary writers upon all periods, contrast as markedly with Mr. Gardiner's conscientious examination of primary authorities. Mr. Harrison stimulates the imagination by daring comparisons and vivid word-painting upon well-known facts, while Mr. Gardiner, by patient research, discovers and relates the actual sequence of events in the field of history which he has made his own. Two of the reprinted essays in the volume under review were originally addresses delivered before University Extension students at Oxford, and they seem admirably fitted for such an audience; whereas Mr. Gardiner's elaborate and impartial works need considerable education and training for their right understanding and even for their patient reading. It may easily be guessed that to Mr. Frederic Harrison Mr. Gardiner is the living type of the minute and careful research which he himself regards as a very small part of the work of the historian, and it goes without saying that Mr. Gardiner's books do not appear in the list of those which Mr. Harrison recommends to Extension students. Only once does Mr. Harrison mention Mr. Gardiner by name, and he twice alludes to him in different essays merely as a typical and most laborious scholar. Far above Gardiner does Mr. Harrison rank Carlyle as an historical writer. In spite of the famous Scotchman's wonderful capacity for making mistakes, in spite of his inability to weigh evidence, in spite of his utter lack of

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any sense of historical proportion, in spite of the gross and often willful carelessness with which he deals with his authorities, Mr. Harrison persists in regarding Carlyle as an historian, and even goes so far as to recommend his books as histories. Carlyle's *Cromwell* is called "one of the most splendid monuments of historical genius," and a "masterpiece of industry and genius;" and the unfortunate reader of seventeenth century history in England is recommended to supplement it by a study of Guizot — of Guizot! of all people in the world — and of Green's *Short History of the English People.* And again, Carlyle's *French Revolution* is styled, "a great book," "an enduring book," and "the most striking extant example of the poetical method applied to history;" although in the same breath Mr. Harrison admits that "Carlyle has too often proved to be extravagant or unjust and sometimes flatly mistaken in his facts." It is indeed a blessing for the future historians of England that Mr. Harrison is to have no share in their training, when he holds such extraordinary views about the true province of history as to rank the most conspicuous offender against the canons of historical truth of the last hundred years among the greatest of great historians. As a corrective to the extravagant views avowed by Mr. Harrison upon this subject, a careful study may be recommended of the recent article upon the scientific study of history in the *Fortnightly Review* by Mr. H. A. L. Fisher, one of the most accomplished of the younger school of Oxford historical teachers.

In conclusion, although Mr. Harrison's views on history may be deprecated, and his accuracy suspected, since he deals with equal ease with so many different subjects and so many remote and unconnected periods, it would be unfair not to admit his skill as a writer, and not to recognize that "the man of letters who has read much history" can invest his work with more subtle charms of style than the laborious scholar who patiently pieces together the history of the past and is apt to lose in the examination of details the broad grasp and deep insight which alone can win immortal fame for a writer of history.

H. Morse Stephens.

Cornell University,
Ithaca, N. Y.

The Historical Development of the Jury System. By Maximus A. Lesser, A.M., LL.B. Rochester, N.Y., 1894. — 12mo, 274 pp.

What we most need in the field of English legal history is original work, based on careful study of the sources: work such as is being

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done by Brunner in Berlin, by Maitland at Cambridge, and by Ames and Thayer at Harvard. Until much more work of this sort has been done, mere digests of the literature are little needed. Mr. Lesser's book belongs to the latter class rather than to the former, and is, I regret to say, a very poor specimen of its class. It can hardly be termed a digest: it is more like a scrap-book. It is full of excerpts; and these are drawn with little discrimination from older authors whose construction of legal history was mainly guess-work, from magazine and cyclopædia articles which are of little more value than Mr. Lesser's own book, and from recent writers who have really investigated the history of the jury on the basis of the oldest written laws and documents. The juxtaposition of these heterogeneous clippings is rather bewildering to the student who knows something of their relative value. To the student who should begin his study of the jury with this book the problem of its development would surely seem insoluble.

The most important contribution to the history of the English jury is Heinrich Brunner's *Entstehung der Schwurgerichte* (Berlin, 1871). Brunner's book removed a large number of earlier hypotheses from the category of unproven to that of disproven; showed that Forsyth was right in attributing the establishment of the jury in England to the Norman kings; and that Biener was right in maintaining that the jury was first established in Normandy. But Brunner carried the history a long step further back. He not only showed the connection between the English verdict-finding jury (*Urtheiljury*) and the Anglo-Norman jury of proof (*Beweisjury*), but traced the latter back to the Frankish *inquisitio*. Mr. Lesser has read Brunner's book; he cites from it repeatedly, and adopts, in the main, its conclusions. But he must have compiled the greater part of his own book before reading Brunner, and he had not the courage to do what he should have done, — cut out the antiquated excerpts from the older literature.

As it is, the citations from Brunner and from the admirable supplementary articles of Professor Thayer[1] seem incongruous — an alien graft of fruit-bearing branches on a barren stock. And as far as Brunner's book is concerned, the quotations, whether from haste or carelessness, are quite inaccurate. Some of the errors may charitably be attributed to bad proof-reading. So, on page 77, a statement is supported by a reference to Brunner's *Schwurgericht*, pages 54–59 and 205. The passages cited refer to quite other matters:

[1] The Jury and its Development, *Harvard Law Review*, vol. viii (1891–92).

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the reference should be to page 399. So, again, a translation in Mr. Lesser's text (page 95) of a sentence from Brunner in which the latter gives the essential characteristic (*Merkmal*) of the Frankish *inquisitio*, begins with the words "*no* characteristic," which completely reverses the meaning. Mr. Lesser probably wrote "*the* characteristic." But in many other cases the author has clearly misinterpreted Brunner. If he had really digested either the *Schwurgericht* or any of the modern treatises on early Teutonic law which he cites, he could not speak of the *scabini* or *Schöffen* as "sole judges of fact as well as law," nor compare them to the Roman *judices pedanei* (page 52), when in fact these Teutonic representatives of the people simply decided which of the litigants was to prove his allegation and how he was to prove it. Nor, in speaking of the judicial duel, could he say (as he does on page 92, note 14) that "Brunner demonstrates its antiquity by reference to a capitulary of Louis the Pious . . . (A.D. 819)." He cites *Schwurgericht*, pages 189, 197, 198. Here are, in the first place, two printer's errors. The capitulary cited is of the year 817; and the references to Brunner should be to pages 68 and 198. But apart from these errors, the passage indicates a remarkable confusion of ideas. It implies that the judicial duel, with which the Germans came into authentic legal history centuries earlier, cannot be traced back beyond the ninth century. The purpose for which Brunner actually cites the capitulary is to show that, even after the Frankish emperors had instituted the practice of interrogating witnesses before they gave oath, the oaths of the witnesses were still conclusive unless their veracity was challenged by the declaration that they had perjured themselves; which challenge, as for centuries before, involved an appeal to the ordeal of battle. Brunner's point is that there was not yet, under the capitulary of 817, any weighing of evidence; proof by oath was still "formal," and conclusive unless challenged. Again, Mr. Lesser quotes Brunner as saying that the Frankish *inquisitio* "originated in the capitularies and documents of the Carlovingian period" (page 94). What Brunner says is, that the capitularies and documents of the Carlovingian period recognize (*kennen*) the *inquisitio*. Elsewhere he shows that the *inquisitio* was not established by legislation, with the assent of the magnates, but by administrative custom, and that the innovation was based on the equitable powers of the Frankish crown.

For a final illustration of Mr. Lesser's failure to assimilate the *Schwurgericht* I may cite his treatment of the Anglo-Saxon *secta*, to which he refers in three or four places. Nowhere is any hint given

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of Brunner's interesting theory that the *sectatores* were originally simply witnesses to the complaint, and that their coöperation was required to make out a *prima facie* case and to serve as a bar to frivolous litigation.

How accurate or inaccurate the author's citations from other books may be I have not undertaken to determine. I have examined only some of his references to Brunner.

MUNROE SMITH.

State Papers Relating to the Defeat of the Spanish Armada. Edited by J. K. LAUGHTON for the Navy Records Society. Printed for the Society, London, 1894. — Two vols., 365, 418 pp.

About ten years since, a well-known Spanish naval officer, Captain Duro, published, in a work called *La Armada Invencible*, an immense number of Spanish documents relating to the invasion of England in 1588. Now an English naval officer, Professor Laughton of King's College, London, has edited, in two handsome, well-printed volumes, all the important English documents relating to the strictly naval aspect of this invasion. The editor has prefaced his collection of state papers by an introduction (74 pages) in which he gives the conclusions to which his researches have led.

For the narrower and purely naval aspect of the Armada we now have ample materials in the publications of Duro and Laughton. And it was fitting that the latter, editing for a Navy Records Society, should devote himself, not only in the choice of documents, but in the introduction, almost exclusively to this aspect. On the other hand, it is for the same reason strange that the editor deems it "unnecessary here to describe the fights of that eventful week" (page lii). For it is certainly possible, by a careful and critical comparison of the authentic English and Spanish evidence now before us, to give step by step a fairly accurate account and explanation of the channel fights. And it is desirable, at this time of special interest in the influence of sea power upon history, to know exactly what happened in those summer days of the year 1588, when the English sailors turned the history of the world towards a new and happier goal.

Professor Laughton gives several very interesting pages (xliv ff.) to a comparison of the English and Spanish guns. Unfortunately the data are not adequate to his purpose. We have an official description of the guns of only two Spanish ships. The armaments of the others (table, page xlv) are taken from a Spanish document dated July 9, 1587, compared in the case of the *San Lorenzo* with the somewhat loose report of an Englishman who boarded her off

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Calais. On account of its date, the Spanish document proves nothing in regard to the armaments in the channel fights. It is known, for example, that on March 14, 1588, Philip ordered the armaments to be strengthened. The document, indeed, differs decidedly from the official inventory taken at Lisbon (May, 1588).

The statement (page xliv) that the Spanish guns were "as a rule . . . small — 4, 6 or 9-pounders" seems to be based largely on the fact that Medina Sidonia, August 5, 1588, sent a messenger to Parma asking for balls of 4, 6 and 10 pounds. The conclusion is rather hasty. The smaller guns could naturally be fired more easily and quickly; the balls assigned to them may thus have been sooner used up.

We have no exact information about the armament of the English ships. The figures given in Professor Laughton's tables are taken from papers dated 1586, 1595, 1595–99. The unsatisfactory nature of the evidence is illustrated by the fact that in respect to each of the three ships *Tiger*, *Rainbow* and *Vanguard* the armament in 1586 differs very widely from that in 1595–99.

Perhaps we can arrive at a fairer appreciation than Professor Laughton's of the relative strength of the Spanish and English armaments by comparing the ships which, according to the Spanish and English documents, bore the brunt of battle in the channel. The armaments of the English ships must unfortunately be taken from the unsatisfactory list of 1595–99. On the next page the principal facts are presented in tabular form.

According to this evidence no English ship had more guns than *Victory*, 46. Of the twenty-two Spanish ships eight had more than this, with a maximum of 52. The armament of *San Lorenzo*, to which Professor Laughton's table assigns a broadside of 330 pounds, was probably little heavier than that of the other three galeasses; seven of the squadron of twenty-two probably had an armament superior or similar to *N. S. d. Rosario*, to which Professor Laughton assigns a broadside of 200 pounds; seven an armament ranging between *N. S. d. Rosario* and *San Salvador*, to which Professor Laughton assigns a broadside of 185 pounds. This leaves only four equal or inferior to *San Salvador*. Moreover, the light armament assigned in Professor Laughton's tables to *Anunciada* and *Sta. Maria* has no authority except the unreliable document of July 9, 1587.

Of the English squadron of fifteen none could deliver a broadside materially heavier than the Spanish *San Lorenzo*, and only three a broadside as heavy, so that the four galeasses and these three ships

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SPANISH FLEET.

SHIPS' NAMES.	TONS.	NUMBER OF GUNS.
S. Juan de Portugal	1050	50
Rata	820	35
San Mateo	750	34
San Felipe	800	40
San Martin	1000	48
Gran Grin	1160	28
Regazona	1249	30
Santa Ana (Oquendo)	1200	47
San Marcos	790	33
San Xpobal	700	36
San Juan (D. Flores)	530	24
S. Juan d. Sicilia	800	26
Veneciana Valencera	1100	42
Begoña	750	24
S. Luis	830	38
Gal. Florencia	961	52
Santiago	520	24
Juan Bautista	750	24
Each of four Galeasses	.....	50

ENGLISH FLEET.

SHIPS' NAMES.	TONS.	GUNS, 6-POUNDERS AND OVER.	GUNS SMALLER THAN 6-POUNDERS	TOTAL OF GUNS.	APPROXIMATE WEIGHT OF BROADSIDE.
Revenge	500	.....	.....	.....	.....
Victory	800	39	7	46	216
Ark	800	38	6	44	324
Golden Lion	500	35	9	44	222
Nonpareil	500	32	8	40	222
Mary Rose	600	29	3	32	216
White Bear	1000	31	9	40	336
Eliz. Jonas	900	35	9	44	292
Rainbow	500	26	.....	26	232
Vanguard	500	31	.....	31	241
Eliz. Bonaventure	600	33	6	39	246
Dreadnought	400	27	6	33	157
Swallow	360	.....	.....	.....	.....
Hope	600	30	6	36	244
Triumph	1100	38	6	44	336

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probably had similar armaments. Ten others of the fifteen English ships were similar or superior to *N. S. d. Rosario* in weight of broadside. These would correspond to the seven Spanish ships mentioned above. The two remaining English ships were inferior in weight of broadside to *San Salvador*, whereas the Spaniards had seven ranging between *N. S. d. Rosario* and *San Salvador*. The mere superiority in the number of important ships of course greatly raised the number of Spanish guns.

The Spanish squadron of twenty-two carried an average of 38 guns of all sorts; the English squadron of thirteen,[1] an average of $32\frac{8}{13}$ guns firing a ball of 6 pounds and over, and $38\frac{5}{13}$ guns of all sorts. The average numbers of guns of all sorts, therefore, were almost equal; while, looking only at the ships which did the hardest fighting and practically decided the contest, the Spaniards had absolutely very many more guns than the English. Our data further indicate that the armaments of many of the twenty-two Spanish ships compared not unfavorably in weight with those of the English squadron of fifteen.

In all this it must, however, be remembered that our evidence is unsatisfactory. The above discussion is meant simply to show this, and to modify the somewhat misleading statement that the Spanish guns were neither "numerous" nor large, but "as a rule . . . 4, 6 or 9-pounders."

From the mass of valuable things in the book I should single out for special mention the "Relation of Proceedings" (I, p. 1) and the proof of its authenticity (II, 338); the explosion (p. lxxvii) of the story of David Gwynn, which Motley tells with such enthusiasm; the discussion (p. lvii) of the causes of the illness in the English fleet, Professor Laughton concluding, in opposition to Froude, that it was not due to sour beer and putrid beef, and that the queen did not deliberately starve the seamen; lastly, the origin of Palavicino's proposal to Parma (II, 198).

Professor Laughton is to be congratulated upon having made an invaluable contribution to history. His book is a graceful and peculiarly fitting monument to the glory of a reign that made England mistress of the seas.

W. F. TILTON.

CAMBRIDGE, MASS.

[1] Omitting *Revenge* and *Swallow*. The latter would have lowered the average.

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RECORD OF POLITICAL EVENTS.

[From November 5, 1894, to May 16, 1895.]

I. THE UNITED STATES.

FOREIGN RELATIONS. — Certain incidents under this head have assumed greater prominence than the mere facts seem to warrant through the activity of a political group, embracing Democrats as well as Republicans, which aims to commit the United States to an aggressive foreign policy and to a vigorous policy of self-assertion and of territorial expansion. This group has manifested some strength in Congress and through the press, and has especially antagonized the administration, because of President Cleveland's attitude on Hawaiian and Samoan affairs. In connection with affairs in Latin America, much has been said as to the duty of interference by the United States as against European powers under the principles of the Monroe Doctrine. — Renewed rumors as to Great Britain's intention to establish a protectorate over **the Mosquito Coast** attracted some attention in November. The British government, however, gave explicit assurances that it neither desired nor intended to assert such a protectorate; and a convention was entered into between Nicaragua and the Indians which declared that the latter, while retaining certain privileges, became subject to the political and administrative authorities of Nicaragua. In connection with Great Britain's proceedings against Nicaragua in the spring (see below, p. 387) it was announced that the British government had satisfied the United States that no acquisition of territory was contemplated. — A grievance against Spain arose out of **the Alliança affair.** On March 8 the United States mail steamship *Alliança*, while passing the eastern point of Cuba, was fired upon with solid shot by a Spanish gunboat, which was stationed at that place to cut off communication by the insurgents with Hayti. The *Alliança's* captain claimed that he was on the high sea, six miles from the Cuban coast. On March 15, Secretary Gresham, through the American minister at Madrid, demanded of Spain "prompt disavowal of the unauthorized act," and insisted upon "immediate and positive orders" to Spanish commanders not to interfere with legitimate American commerce. On April 28 it was announced that Spain, after investigation, acknowledged that a mistake had been made and would make appropriate reparation. — The administration's **Hawaiian policy** has been watched with especial vigilance by the friends of annexation. On December 19 was made public a report of Admiral Walker, who had commanded a United States war ship at Honolulu in the preceding summer. In the report the admiral expressed deep suspicion as to British projects and influence in Hawaii, and strongly urged

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that our navy should be represented at Honolulu as long as a British war ship was there. The despatches of the American minister, Mr. Willis, put an entirely different and wholly innocent construction on the incidents on which Admiral Walker's suspicions were founded. On January 9 President Cleveland transmitted to Congress, with a recommendation of favorable action, a request from the Hawaiian government that the United States should consent to the lease of an uninhabited island by Hawaii to Great Britain, to be used as a landing for the proposed cable between Canada and Australia. By the existing reciprocity treaty between Hawaii and the United States such a lease to any other foreign power is prohibited. No action was taken by Congress in the matter. Upon the news of the royalist uprising in Hawaii (see below, p. 387) much fault was found with the administration because no United States war ship was there at the time. A vessel was promptly sent, but on January 20 President Cleveland made a public statement that it was sent "not because there has been any change in the policy of the administration," but "from motives of extreme caution," because of possible danger to American citizens. The commander's instructions explicitly forbade him to extend protection to any American citizen who should have participated in the civil commotions. On February 21, Secretary Gresham asked for the recall of Mr. Thurston, the Hawaiian Minister at Washington, on the ground that the latter had furnished to the press matter reflecting on the administration. — A treaty with Japan, on the same lines as the Anglo-Japanese convention mentioned in the last RECORD, was concluded at Washington November 22, and was ratified by the Senate January 30. — Late developments in connection with **the Bering Sea seal fisheries** have caused some discussion. Statistics of the catch during the last season show that the pelagic sealers, chiefly Canadian, took 60,000 seals, mostly females, while the government's lessees at the Pribyloff Islands took only 16,000, which, as required by law, were all males. Since in former years the catch at the islands easily reached 100,000, Secretary Carlisle has expressed the conviction that, despite the regulations agreed to by the Paris arbitration, the herd is doomed to extinction within five years. These regulations have had no effect in decreasing the pelagic catch; it has, on the contrary, greatly increased. Secretary Gresham's offer of $425,000 in settlement of the claims of Canadian sealers against the United States (see last RECORD, p. 762) failed to secure the approval of Congress, the opposition contending that the proportion of claims allowed was excessive, and that some of the parties in interest were in fact American citizens. A proposition to appropriate money for a joint commission to determine the proper amount to be paid also failed, and upon the adjournment of Congress, the administration entered into negotiations with Great Britain for the settlement of the claims by arbitration.

INTERNAL ADMINISTRATION. — The first change in the *personnel* of the cabinet was announced by the resignation of Postmaster-General Bissell February 27. His retirement was due to personal business consid-

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erations, and Congressman William L. Wilson, of West Virginia, was at once nominated and confirmed as his successor. The change took effect April 4. — In accordance with an act of Congress carrying out the recommendations of a joint commission (the Dockery Commission) on the business methods of the executive departments, a reorganization of the methods of the Treasury Department has been carried into effect. The most important change is in the accounting system. The offices of first and second comptroller and commissioner of customs have been abolished and their functions assigned to a single comptroller of the treasury, while the auditing business has been so arranged that each of the auditors has charge of all the accounts of a particular department. Reductions of 176 in the clerical force, and of nearly $250,000 annually in expenses, have been effected by the reorganization in the accounting system alone. Other reforms, both in the Treasury and in other departments, bring the saving up to a much larger figure. — The annual report of Postmaster-General Bissell contained some important suggestions as to the **postal policy** of the government, which were endorsed by the president in his message to Congress. The deficit for the last fiscal year was nine millions, which Mr. Bissell thought could be reduced, but not extinguished, in the next two years. He announced a considerable saving through the abrogation of the subsidies for South American service, and laid the chief responsibility for the deficit upon the abuses that had grown up in connection with second-class matter. The handling of such matter, he showed, cost eight times as much as it brought in to the government — a fact that was due to the practice of entering as periodicals publications that in no proper sense fell into such a category. The postal telegraph and the extension of free delivery to rural districts he held to be undesirable and too expensive for this country. And finally, he made an earnest plea for some system by which the postmaster-general should be relieved from the burden of appointing fourth-class postmasters. — The inadequate administration of justice in the Indian Territory attracted considerable attention during November. Bands of desperadoes committed many robberies and murders, frequently "held up" railroad trains, and in some instances took possession of good-sized towns. The worst of the outlaws were ultimately captured by the national authorities. Attorney-General Olney, in his annual report, ascribed these recurring evils to insufficient appropriations for the expenses of the marshals in that wild and sparsely peopled country. It was recommended that a federal court be established in the Territory to exercise the jurisdiction that had hitherto fallen to the federal courts of Texas and Arkansas. — In December a further **extension of the classified service** was made by two orders of President Cleveland. By the first order, issued on the 7th, some 150 offices in the Geological Survey of the Department of the Interior, involving for the most part scientific and technical qualifications, were brought under the system of competitive examination; and on the 12th a similar order was issued with reference to storekeepers, gaugers and

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clerks in the internal revenue service of the treasury, affecting in all about 2600 places. Mr. Roosevelt, of the Civil Service Commission, resigned his position April 30, to take office in the municipal government of New York.

THE FINANCES AND THE CURRENCY. — The difficulties of the treasury, on account of the deficit and of the diminution of the gold reserve, have constituted the leading topic in national politics during the period under review. During the first half of November, with the gold reserve at about $62,000,000, and with expenses still ahead of receipts, the approach of a season when large export withdrawals of gold are usual led to **the first bond issue.** On November 13 subscriptions were invited for $50,000,000 in ten-year five per cent bonds. On the 26th the whole issue was awarded to a syndicate at 117.077 — making the rate of interest 2.878 per cent. The proceeds of this loan raised the treasury gold in the first week in December to $112,000,000, which sum, however, began at once to dwindle. Meanwhile, at the meeting of Congress, the secretary of the treasury had embodied in his report, with the president's approval, what became known as the **Carlisle scheme of currency reform.** The facts chiefly responsible for the treasury's inability to keep its gold, Mr. Carlisle pointed out, were the statutory requirements (1) to redeem in coin and then to reissue the government's notes, and (2) to maintain the parity of two kinds of coin of unequal intrinsic value. A prime necessity was to disconnect the treasury from any concern in the issue or reissue of legal-tender notes. But this would be expedient only on condition that provision could be made for a safe and elastic currency. To secure this the secretary proposed a reorganization of the national banking system on the following lines: Repeal the laws requiring the banks to secure their circulation by deposit of government bonds; permit the banks to issue notes up to 75 per cent of their capital, to be secured by (1) a guarantee fund of legal-tenders deposited by each bank amounting to 30 per cent of its circulation, (2) individual liability of the stockholders, and (3) a safety fund amounting to five per cent on the total circulation, to be made good, in case of impairment, by assessment of all the banks; abolish the requirement of a bank reserve on account of deposits; and repeal the tax on the circulation of such state banks as may conform to requirements for security substantially the same as those applicable to national banks. A capital advantage of this plan was held to be the protection given to the treasury against demands for redemption of the legal tenders, by the use of the latter in the guarantee fund. A bill embodying this plan was introduced in the House early in December, and after some changes in details, was approved by a Democratic caucus January 7. Two days later, however, the House refused, by 129 to 122, to accept the resolution of the committee on rules under which the bill was to be pressed to its passage, and this vote was a deathblow to the measure. The main elements in the opposition to the plan were on the one hand, the Republicans and Eastern Democrats who objected to a revival of state-bank currency and favored funding the paper currency,

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and on the other hand, the Democrats and Western Republicans who felt that the bill left no hope for the free coinage of silver. — Various attempts in the Senate to formulate some plan that should give promise of success failed one after another, and meanwhile the treasury's gold was disappearing at an alarming rate. On January 28 the amount stood at $52,463,173, the lowest point ever reached since resumption in 1879. On that day an energetic special message from President Cleveland presented to Congress in outline **the administration's second project as to the currency.** The message dwelt especially on the need, often urged before, of power to issue a low-rate bond, and on the absurdity of the arrangement under which the outstanding treasury notes could be used over and over again to drain away the gold. The recommendations included (1) the issue of a fifty-year three per cent bond, payable in gold, the proceeds to be used in maintaining the treasury's gold reserve and in redeeming legal-tender and treasury notes; (2) the cancellation of all notes so redeemed; (3) permission to national banks to circulate notes up to the par value of bonds deposited, such notes to be of denominations greater than $10; (4) the limitation of silver certificates to denominations less than $10; and (5) the requirement that import duties be payable only in gold. The president intimated that the failure of legislation would be followed by another bond issue on the old lines. A bill embodying the president's recommendations was, after sharp discussion, brought to a vote in the House February 7, and was rejected by 135 to 162. During this debate the Republicans took the formal ground that one important cause of the treasury's difficulties was the inadequate revenue provided by the last tariff act. The failure of this bill was followed quickly by **the second bond issue.** The drain of gold had been greatly accelerated during the debate, and on the day of the vote the treasury held only $41,743,136. Much of the metal withdrawn was not for export, but for hoarding, and in some circles a serious panic was apprehended. On the 8th of February the president, in a message to Congress, announced the conclusion of a contract with the banking houses of Belmont, Rothschild and Morgan for the purchase of 3,500,000 ounces of gold, to be paid for in thirty-year four per cent coin bonds, on terms which made the price of the bonds about 104½, and their amount $62,317,500. The contract provided that half the gold should be procured abroad, and gave to the government the privilege of substituting, within ten days, three per cent gold bonds at par for the coin four per cents, if legislation should authorize the issue of the former. The president pointed out the advantages of such legislation, showing that the substitution of "gold" for "coin" in the redemption clause would save half a million yearly in interest. Under other provisions of the contract, revealed when it was made public on the 13th, the bankers concerned were given an option on any other bonds that might be issued up to October 1, and on their part undertook "to exert all financial influence and [to] make all legitimate efforts to protect the treasury of the United States against the withdrawal of gold" during the period allowed

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for the performance of their contract. The administration's operation excited violent hostility among the silver men, and many Republicans censured the contract as less favorable than might have been obtained. A resolution to authorize the issue of gold bonds, as suggested by the president, was introduced in the House, but was rejected February 14, by 120 to 167. A point insisted upon by the opposition was that, whereas our "coin" obligations had always hitherto been paid in gold, the proposed change would imply a change of policy in this respect and would therefore be ruinous to our credit. When, upon the failure of legislation, the syndicate began to put the four per cents upon the market, the loan was eagerly taken up in both London and New York, and the market quotation of the bonds rose at once to as high as 118. This fact occasioned violent attacks on the administration, both in Congress and out, for having accepted so low as 104½. In defense it was shown that a suspension of gold payments, at least at the New York sub-treasury, was within forty-eight hours of realization when the contract was made, and that this fact put the government at the mercy of the bankers. — **The deficit in the revenue** continued throughout the period under review to complicate the general situation. Secretary Carlisle's report to Congress announced that the deficit for the year ending June 30, 1894, was $69,803,260. He estimated for the current year a deficit of $20,000,000, and for the succeeding year a surplus of over $28,000,000. The probability of improvement he based on expectations of future returns from the sugar tax, the reduced woolens duties, which would become operative after January 1, 1895, and the income tax, which would not begin to be productive till July, 1895. An improvement in revenue was manifested during the winter, but failed later to realize anticipations, and at the close of the RECORD a deficit of at least $45,000,000 seemed probable for the fiscal year. The income-tax decision (see below, p. 369) was held responsible in a large degree for the failure of the treasury's estimates. Shortly after April 15, when the returns, as amended to conform to the court's decision, were all in, the net revenue to be expected from the tax was found to be less than fifteen millions. — A concerted movement for a **National Free Silver Party** in the West and South has attracted considerable attention during the spring. A definite attempt to commit the national committee of the Populists to temporary abandonment of all but the free-coinage plank of their platform failed. But much sympathy with the free-coinage movement has been displayed by many Democratic and Populist state organizations, and in Illinois and several other states a total disruption of the Democratic Party at one time seemed imminent. A large convention of Western silver men was in session at Salt Lake City in the middle of May.

CONGRESS. — The third session of the fifty-third Congress opened December 3. President Cleveland's annual message was quite destitute of sensational features. The review of foreign relations was held to demonstrate the advantage of adhering to "a firm but just foreign policy, free from envious or ambitious national schemes, and characterized by entire honesty

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and sincerity." The president's most important suggestion was a repetition of that made in the preceding year, looking to a withdrawal from the existing Samoan treaty. As to internal affairs, the following were among the recommendations made, in addition to the endorsement of those made by heads of departments and noticed elsewhere in this RECORD: That money be appropriated for additional battle ships and torpedo boats for the navy; that adequate protection be provided for our forest reserves and that a comprehensive forestry system be established; that the further allotment of land in severalty to Indians be very cautiously made, and with modifications in method that shall obviate the conspicuous evils developed by the system hitherto; and finally, in connection with the tariff, that coal and iron be put on the free list, that the differential duty on sugar from countries paying an export bounty be abrogated, and that foreign-built ships be admitted to American registry. — The session of Congress was not productive of **legislation** outside of the usual routine. Currency questions excited the most attention, and these are noticed elsewhere. In connection with the tariff and income-tax legislation of the last session, a feeble attempt was made in the Senate to take up for action the so-called "pop-gun bills" for adding coal, iron and sugar to the free list, passed by the House in August (see last RECORD, p. 765). A test vote on taking up the Sugar Bill was decided in the negative, December 12, by 27 to 23, and the general sentiment against any tariff changes dominated the Senate during the remainder of the session. In the House a bill to repeal the differential duty of one-tenth of a cent on sugar from countries which paid an export bounty was passed, January 29, by 239 to 31. To mitigate the injustice done to sugar producers by the abrupt stoppage of the bounty at the passage of the last tariff act, an appropriation of $5,238,289 was made to prolong the payment of the bounty so as to affect sugars produced before June 30, 1895. As no appropriation had been made at the previous session for the expenses of collecting the income tax, an urgency deficiency bill providing the money was passed in January, and by joint resolution the time within which returns of income must be filed was extended from March 1 to April 15. A demonstration against the administration's Hawaiian policy was involved in a vote of the Senate, February 9, authorizing the president to contract for laying a cable to Hawaii. The proposition passed the Senate 36 to 25, but was lost in the House by 152 to 114. The friends of a strong foreign policy also found especial interest in the bill for incorporating a Nicaragua Canal Company, which passed the Senate January 25 by 31 to 21. Under this bill the United States was to guarantee the company's bonds and was to hold seven-tenths of the $100,000,000 of capital stock. The bill was not acted upon by the House. Important measures on which the House of Representatives acted were as follows: An amendment to the Interstate Commerce Act by which "railway pooling," previously prohibited, is permitted, under the supervision of the Commission — passed December 12, by 164 to 110; a bill to refund the debts of the Pacific railways — recom-

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mitted without instructions, February 2, by 177 to 108; a Compulsory Arbitration Bill, providing for the settlement of labor disputes by arbitrators, whose decision should be enforcible by the United States courts acting as courts of equity — passed without division February 26. — According to the statement of the chairman of the appropriations committee the total appropriations by the fifty-third Congress amounted to $990,338,691, about thirty-seven millions less than those of the preceding Congress, the difference being due chiefly to the pension account.

THE FEDERAL SUPREME COURT. — The decision on **the Income Tax Cases**, several of which had been pushed through to the highest tribunal since the process of collection was begun in January, was rendered April 8. The constitutionality of the law had been assailed on a variety of grounds, and the judgment of the court was as follows: 1. So much of the act (see this RECORD for June, 1894, p. 355) as attempts to impose a tax upon the rent or income of real estate without apportionment is invalid; since such a tax is a tax on real estate, and is therefore a "direct tax," which must under the constitution be apportioned among the states. 2. The act is invalid so far as it attempts to levy a tax on incomes from state or municipal bonds; since such a tax is a tax on the power of a state to borrow money, and is therefore unconstitutional. On the other important points presented by the cases it was announced that the court, Justice Jackson being absent through illness, was evenly divided. The questions involved in this announcement were: 1. Whether the void provisions as to income from real estate invalidated the whole act. 2. Whether, as to the income from personal property as such, the act was unconstitutional as laying direct taxes. 3. Whether any part of the tax, if not considered as a direct tax, was invalid as not fulfilling the constitutional requirement of uniformity. Upon a petition by counsel for a rehearing upon the whole case, in order to determine the unsettled points, the court ordered, April 23, that in the event of Justice Jackson's speedy recovery, which was expected, a rehearing would be had. Accordingly counsel were heard by the full bench May 6–8, but no decision had been made at the close of this RECORD. — In the case of United States *vs.* the E. C. Knight Co. *et al.*, which was a suit instituted by the attorney-general against what was formerly the Sugar Trust, the supreme court, January 21, held: That the contracts and acts through which the American Sugar Refining Company absorbed certain Pennsylvania corporations, and thus secured control of about 98 per cent of the refining business of the country, related exclusively to the acquisition of a manufacturing business and "bore no direct relation to commerce among the several states or with foreign nations"; and that therefore the combination thus effected was not illegal under the Anti-Trust Act of 1890. In connection with **questions of interstate commerce** the following decisions have been rendered: Plumley *vs.* Commonwealth, December 10: Held, that the Massachusetts law prohibiting the sale of substances colored to imitate yellow butter, did

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not, when applied to oleomargarine imported from another state and sold in the original package, conflict with the exclusive right of Congress to regulate interstate commerce. Emert *vs.* Missouri, March 4: Held, that the Missouri act requiring a peddler's license of every one who carried about commodities for sale, did not, when applied to the agent of a manufacturer in another state, conflict with the interstate commerce clause. Coal Company *vs.* Bates, March 4: Held, that coal brought in boats from Pennsylvania to Louisiana and remaining in the boats pending use or sale was subject to taxation by the latter state, and that the collection of a state tax was not an unconstitutional restriction of interstate commerce.

THE ELECTIONS. — The result of the voting throughout the country on November 6 was an overwhelming triumph for the Republicans. As to **Congress**, for the House of Representatives a Republican majority of about 140 was returned, and the control of the Senate was lost by the Democrats through the changes in the state legislatures. Many of the most prominent Democrats in the House failed of reëlection, among whom were Wilson of West Virginia, Springer of Illinois, Holman of Indiana, and Bland of Missouri. In twenty-four states, including New Jersey, West Virginia, Connecticut and Indiana, the Democrats failed to elect a single member, and in each of six others but a single non-Republican was returned. Pennsylvania chose two Democrats out of 30 members; Illinois, two out of 22; Ohio, two out of 21; and New York, five out of 34. The returns of the voting for **state officers** showed the same general results. Great Republican majorities were the rule. Thus in New York Senator Hill, the Democratic candidate for governor, was defeated by ex-Vice-President Morton by 156,000; Illinois and Wisconsin, which went over to the Democrats in 1892, now came back into the Republican line by 123,000 and 54,000 respectively. Most significant of the results, however, were the losses of the Populists in the West and of the Democrats in the South. Four Western states whose government had been under Populist control — Kansas, Colorado, North Dakota and Idaho — were carried by the Republicans. In Nebraska the fusion (Populist and Democratic) candidate for governor was elected, while the Republicans carried the rest of the ticket. In the border states of the South heavy Democratic losses were the rule. Delaware, Maryland, West Virginia and Missouri went strongly Republican on Congressional or state tickets, or both. In North Carolina a Republican-Populist fusion secured the legislature and most of the Congressmen. The Republicans gained one Congressman in Virginia, one in Texas and two in Tennessee. In Tennessee the Republican candidate for governor, Evans, had 700 majority on the face of the returns. But the legislature, which had a Democratic majority, declined to recognize his election, instituted an investigation of alleged frauds, and on May 3 adopted a report of the committee declaring the Democratic candidate, Turney, elected. The latter was accordingly inaugurated May 8. The Populists in Alabama secured one Congressman, and Kolb, their candidate for gover-

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nor, claiming that the majority against him was due to fraud, took the oath of office as elected, but made no further effort to assert his position. Elsewhere in the South the normal Democratic majorities appeared, not even the formal revolt of the Louisiana sugar planters showing any influence on the returns. — Considerable interest was excited by the question as to the **influence of the American Protective Association** in the elections. This organization, popularly known by the initials A. P. A., first manifested itself in the West some five years ago, and has now extended throughout the country. It is a secret association, devoted to resisting the influence of foreigners, and especially of Roman Catholics, upon American life. The methods of its activity vary widely in different places, and both methods and results are largely conjectural, owing to the secrecy which characterizes the order. In general its work seems to be more in connection with local and municipal politics than in the broader field, and it takes especial interest in educational matters. The officers of the association claimed that the result of the elections in November was largely due to its work; but so far as the external evidence goes, there is little basis for this claim. Any suspicion of affiliation with the A. P. A. was manifestly dreaded by the political leaders of both parties, as likely to do more harm than good. — Spring elections for various state officers in Rhode Island, Michigan and Wisconsin showed the same Republican majorities as before.

LABOR INTERESTS. — In this field attention has centered chiefly on the later **developments in connection with the great railway strike** of last summer. A commission appointed by President Cleveland to investigate the strike, and presided over by Labor Commissioner Wright, made its report in November. After a long and impartial consideration of the different causes working to bring about disputes between railroad corporations and employees, the report recommended: (1) that a permanent national strike commission be established, with powers of investigation and recommendation in such disputes, its decisions to be enforcible summarily by the courts, and discharges of employees by the companies as well as strikes or boycotts by the employees to be unlawful pending the commission's action; (2) that the various states adopt some system of conciliation and arbitration similar to that in Massachusetts, and prohibit by law contracts requiring men not to belong to labor organizations; and (3) that employers recognize and deal with labor organizations, keep as closely as possible in touch with labor, raise wages voluntarily when possible, and give reasons for reductions when such are necessary. — The decision of the court in the case of Debs and others, charged with contempt in violating the great injunction of July 2 (see last RECORD, p. 770), was announced at Chicago December 14. Judge Woods held that under the Anti-Trust Law of 1890 the action of the strikers was illegal, that the court had power to restrain their acts by injunction, that the defendants violated the injunction, and that they were therefore in contempt. Accordingly he sentenced Debs to six months, and the others to three months, in the county jail. On an

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application for a writ of *habeas corpus* the case was brought before the supreme court at Washington, where it was argued in March. Pending this appeal the trial of the prisoners on the indictments for conspiracy was postponed, and on April 28 the postponement was made indefinite by the government, on the ground that all the vital facts were before the supreme court, and hence further action on the indictments would be persecution. — The only strike of any especial magnitude during the period under review was that of the trolley-line employees in Brooklyn, N. Y., in January. Travel by the surface street-cars was for a time almost entirely stopped in the city, and order was maintained with difficulty by two brigades of militia. The companies readily secured men to take the places of the strikers, and the latter ultimately abandoned the strike. — In the great labor organizations the only important event was the defeat of President Gompers of the American Federation for reëlection, and the choice for the position of John McBride, the leader of the Mine Workers, whose successful strike was noticed in the last RECORD. This change involved the transfer of headquarters from New York to Indianapolis.

VARIOUS STATE LEGISLATION. — A great many propositions respecting **constitutional amendments** were voted upon at the November elections. The question of calling a convention for revision was decided affirmatively in Delaware and South Carolina (though not without question as to the returns in the latter state), but failed in New Hampshire to elicit enough votes to constitute a valid answer. In New York the revision of the constitution noticed in the last RECORD was ratified by a large majority. Michigan adopted a proposition excluding from the suffrage aliens who had merely declared their intention to become citizens of the United States. In California nine amendments were voted upon, of which seven were ratified. Of the seven the most important were (1) that requiring as a qualification for the suffrage that the citizen shall be able "to read the constitution in the English language and write his name"; (2) that exempting young fruit and nut trees and grapevines from taxation; and (3) that forbidding the ownership of real estate by aliens. One of the rejected propositions provided for an increase in the salary of members of the legislature. — **The woman suffrage question** has been before the public in a variety of forms and with a variety of results. In Colorado the women made free use of the right which they enjoyed for the first time at the election in November, and the overthrow of the Populists was said to be attributable in some measure to the new voters. Kansas rejected the proposed constitutional amendment giving women the full suffrage by 130,000 to 95,000. Resolutions for the submission of a like amendment passed the Oregon legislature in February and the New York legislature in April. In Maine a woman-suffrage bill, after passing the lower house, was rejected by the Senate, March 20. In Wisconsin, also, a similar bill failed to pass. On the 5th of April the convention engaged in the formation of a state constitution for Utah adopted a woman-suffrage clause by 75 to 15. This clause was

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stoutly opposed by the Gentile element both in and out of the convention, on the ground that it would especially favor the Mormons. — Among the important **judicial decisions** on state laws have been the following: At Cincinnati, March 30, the Ohio direct inheritance tax was declared unconstitutional, as being in the nature of an excise, but not uniform in its operation; at Mt. Vernon, March 15, the Illinois supreme court declared unconstitutional the law limiting the work of women factory employees to eight hours a day, on the ground that it was an unreasonable abridgment of the inherent and inalienable right to make contracts; at Omaha, November 26, the United States district court held unconstitutional the Nebraska maximum freight rate law. The Illinois attorney-general's efforts to enforce the state Anti-Trust Law were rewarded with a decision by a lower court, March 30, that a school-furniture company fell under the prohibitions of the law. Two decisions of the United States circuit court at Charleston, May 8, in respect to state acts of South Carolina, excited great interest. The first made permanent an injunction against proceedings for the election of delegates to a constitutional convention, on the ground that the registration and election laws of the state were invalid under both the state and the federal constitution. The suit in this case was an incident of a faction fight among the Democrats; the majority faction announced its purpose to disfranchise the negroes by a constitutional amendment, and the minority undertook to thwart this purpose. The second decision made permanent an injunction restraining state officers from interfering, under the Dispensary Law, with any liquor brought from other states for consumption and not for sale, on the ground that the provisions of the law in reference to the importation of liquors were an encroachment on the power of Congress over interstate commerce. The cases have been carried to the Supreme Court of the United States.

MUNICIPAL REFORM. — A movement which for two years has been developing in a number of the large cities has during the last months assumed especial prominence. The general aim of the movement has been to secure greater intelligence and efficiency in city government, to direct the activity of the authorities into the field of social rather than purely political interests, and in general to cut off municipal from national and state politics. In New York, Boston, Philadelphia, Chicago and other cities non-partisan organizations for the ends mentioned have kept up a constant and more or less effective agitation. A considerable impetus was given to the movement by the success of the Rev. Dr. Parkhurst in exposing a very corrupt state of affairs in the police department of New York City. The Lexow Investigating Committee, appointed by the legislature, brought to light during the summer and fall a widespread system of bribery and blackmail, and this proved a strong influence in the municipal elections in November. By a combination of citizens irrespective of party the Tammany Democracy, which had controlled the government for some years, was overthrown and a mayor was installed who was devoted to the program of the

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reformers. The full realization of their projects, however, was thwarted by the opposition of partisan influence, both Democratic and Republican, in the legislature. In San Francisco, at the November elections, a non-partisan and reform movement resulted in the choice as mayor of Mr. Sutro, whose candidacy was in opposition to the corporations that controlled the railways of the city. As to Chicago, where during the autumn a campaign against police corruption in connection with gambling houses had met with success, the reform organization succeeded in March in getting through the legislature a bill establishing the merit system in the civil service of the city, and this project was ratified at the municipal elections April 2.

LYNCH LAW. — A serious affair at New Orleans was the climax of long-standing friction between white and negro 'longshoremen on the levee. Owing to trouble with the labor-union of the whites, the cotton-shippers and other interested employers gave all the work to negroes. After many cases of isolated outrage the whites, on March 11 and 12, made an organized attack on the negroes with firearms, in the course of which seven men were killed and many more wounded. The negroes ultimately resumed work under protection of the militia, and apparently earnest efforts were made to punish the offenders. — In Brooks County, Georgia, December 23, a body of white men in pursuit of a negro murderer incidentally killed three other negroes who were supposed to be aiding the fugitive. In this instance, as in several others in Georgia, the lawless proceedings were stopped by the despatch of militia to the scene. — About the usual number of isolated lynchings were reported from the South, and for the usual causes. In at least one case, the victim was already under sentence of death by the regular court. In Louisiana several negroes who were indicted for hanging a murderer of their own race were acquitted in January on the general ground that their privileges in the matter of extra-judicial action were not less than those of the whites. At Memphis, Tennessee, the trial of the perpetrators of the murder of six negroes, as reported in the last RECORD, resulted in an acquittal, December 14, despite a moral certainty of their guilt. At Cincinnati, January 5, an Ohio judge refused to grant a Kentucky demand for extradition of a negro charged with shooting a man, on the ground, first, that the number of lynchings lately in Kentucky created a presumption that the prisoner, if sent back, would die without legal process, and second, that the governor and trial judge in Kentucky had refused to weaken this presumption by a formal assurance, which had been requested, that the prisoner should be protected from mob violence and should receive a fair trial. — Outside of the South the chief events in this field have occurred in Nebraska and Colorado. In Nebraska, January 1, a defaulting county treasurer, who was out on bail after conviction and sentence for his crime, was seized and hanged by a party of masked men. At Walsenburg, Colorado, March 12 and 13, a mob of miners killed six Italians who were accused of murdering an American, two of the victims having been taken from jail.

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II. FOREIGN NATIONS.

EUROPEAN INTERNATIONAL RELATIONS. — The respective interests of **France and Great Britain in Africa** were brought into prominence in March by a report that a French expedition had entered the upper Nile valley. In the House of Commons, March 28, Sir Edward Grey, under-secretary for foreign affairs, made a statement declaring that the British and Egyptian spheres of influence covered the whole of the Nile waterway and that the sending of an expedition into that region would be regarded as an unfriendly act on the part of the French government. He admitted, however, that he had no reason to suppose that any such act had been committed. The French minister of foreign affairs, M. Hanotaux, replied to the British declaration in a speech in the Senate in which he demanded that Great Britain should be explicit as to her claims in the Nile valley, and should distinguish between those of herself and those of Egypt. The regions in question, he said, if they belonged legitimately to any one, belonged to the Khedive, subject to the overlordship of the Sultan, and France declined to recognize a vague indefinite claim by England that should prematurely settle the future of enormous territories. Questions as to other regions of Africa were in process of diplomatic adjustment by the two powers, M. Hanotaux said, but as to the Nile matter he had never been able to get any definite presentation of Great Britain's claim. — In view of the proposed transfer of the Congo State to Belgium, a treaty was agreed to February 5 in which Belgium formally recognized France's right of preëmption in case of alienation. — Upon the announcement of the Porte's resolution to send a commission to investigate **the atrocities in Armenia**, Great Britain, Russia and France took steps toward an independent joint investigation. Ultimately, however, the powers concluded to send representatives to accompany the Turkish commissioners, with power to question the witnesses. — **A coalition against Japan** was caused by the terms of peace imposed upon China in the treaty of Shimonoseki (see below, pp. 386–7). Russia objected strenuously to the acquisition by Japan of territory in Manchuria, where Russia has long desired to secure a seaport. It was announced April 24 that Germany and France had joined Russia in a representation to Japan against several clauses of the treaty. Great Britain declined to join the coalition. On May 6 it was announced that Japan, in deference to the representations of the powers, had abandoned her claim to territory on the mainland, and would find compensation in an increase of the war indemnity.

GREAT BRITAIN AND IRELAND. — Political and social life in the United Kingdom has been quite destitute of striking incidents. Ireland has been almost abnormally quiet. The platform campaign preceding the opening of Parliament failed to arouse the expected popular enthusiasm for the abolition of the House of Lords. Two Conservative victories in by-

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elections in November and December seemed to indicate, on the contrary, a serious lack of confidence in Lord Rosebery's proposed program (see last RECORD, p. 775). **Parliament** met February 5. The queen's speech noted the fact that offenses against the law in Ireland had sunk to the lowest level as yet recorded. Proposed legislation included bills for modifying Irish land law and for dealing with the evicted tenants; for Welsh disestablishment; for local veto in the liquor traffic; and for the abolition of plural voting. The government's majority, at the outset only 33, was promptly reduced to 14 by the formal defection of the Parnellite faction of the Irish Nationalists on the ground that no home-rule measure had been announced. The slender margin left proved sufficient, however, to carry the ministry through several vigorous attacks by the opposition designed to force either resignation or dissolution. The narrowest majority was on a motion for an amendment to the address dealing with the agricultural depression and the unemployed, February 8, the government prevailing by twelve votes. The government agreed to appoint a commission to investigate the condition of the unemployed. Later on in the session the government's position became somewhat stronger on account of manifestations of friction and lack of harmony between the Conservatives and the Liberal Unionists. None of the government's leading measures has been passed up to the end of this RECORD. The Welsh Disestablishment Bill was introduced by Mr. Asquith, February 25. It provided that in Wales and Monmouthshire the Church of England should cease to be an established church from January 1, 1897; that the jurisdiction of ecclesiastical courts should cease, and the principles of contract and trust should govern in matters respectively of discipline and property; and that the revenues of the church should be vested for administration and settlement in a commission, whose duties were prescribed in great detail. This measure passed its second reading, April 1, by 304 to 260. The Irish Land Bill was introduced by Mr. Morley, March 4. The leading purpose of the measure, he explained, was to insure that the tenant should not be charged rent upon his own improvements. It was further provided that the statutory term for which rents should be fixed by the court should hereafter be ten instead of fifteen years, and that the landlord's right of preëmption should be abolished. The evicted tenants were by the bill given the same opportunities to resume relations with the landlords that were given by the act of 1891. The bill passed its second reading without a division, April 5. The Local Veto Bill, read the first time April 8, was designed to give to local divisions the right to determine by popular vote questions as to the prohibition or regulation of the liquor traffic. It provided that a vote for prohibition should require a two-thirds majority and should go into effect after four years and remain unchangeably in force for three; and that limitation of the number of liquor sellers, Sunday-closing and other regulations could be put in force by a mere majority vote. Sir William Harcourt's budget statement was made May 2. It announced a surplus last year of £776,000, and

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an estimated deficit for the coming year of £319,000. This latter, due to increased naval expenditures, he declared should be met by an additional tax on beer. — Among the casual matters acted upon by the House of Commons were the following: A motion that the House regards with apprehension the fluctuation and divergence of the values of gold and silver and recognizes the evils arising therefrom — accepted by the government and adopted without a division, February 26; a resolution approving the principle of payment of members of the House of Commons — accepted by the government and adopted, March 22, by 176 to 158. Upon the resignation of Speaker Peel, Mr. William Court Gully was elected his successor, April 10, by a party vote of 285 to 274, the Parnellites voting with the opposition.

THE BRITISH COLONIES AND INDIA. — A cabinet reorganization in Canada was rendered necessary by the sudden death of Premier Thompson, December 12, at Windsor Castle, England, where he had just had an audience with the queen. He was succeeded as premier by the Hon. Mackenzie Bowell. The new cabinet was confronted in March with a very serious political situation arising out of new developments in the long-standing **Manitoba School Question.** From the judgment of the Dominion supreme court noted in this RECORD for June, 1893 (p. 367), an appeal was taken by the Catholics to the privy council at London, and on January 29 a decision was rendered reversing that of the lower court. It was held that the Manitoba School Act of 1890 did prejudicially affect the rights and privileges of the Roman Catholic minority, that because of this an appeal to the Dominion government for remedial action was admissible, and that that government had power to issue the proper remedial commands. The announcement of this decision roused much feeling among Protestants not only in Manitoba but in other parts of the Dominion. It was expected that the government would dissolve Parliament on the issue of their duty in the premises; but after some manifestations of uncertainty and division of opinion, it was determined, March 18, to issue an order requiring Manitoba to restore the separate-school privileges of the Catholics. The order aroused much indignation among the Protestant majority of Manitoba, and the Orange Societies in Ontario and the other provinces gave strong demonstrations of sympathy with this feeling. At the close of this RECORD a compromise adjustment was said to be under discussion. — The social turmoil which seems to have become the normal condition of **Newfoundland** has centered recently in a disastrous financial crisis which manifested itself in a general bank suspension about December 10. Great industrial depression and acute distress among the population existed throughout the winter. Politically, the party whose triumph under the application of the Corrupt Practices Act was noticed in the last RECORD has been overthrown. Elections in November gave to the opposition, the Whitewayites, control of the legislature; the disabilities of the convicted leaders were removed by law, the ministry resigned upon the development of the financial crisis, and, after

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six weeks of an interim ministry, on the first of February Sir William Whiteway and his former associates again assumed the reins of government. The grave difficulties of the colony's industrial and financial situation caused serious discussion through the winter as to union with Canada. Though there was much popular opposition to the project, a delegation from the Newfoundland ministry met in conference with representatives of the Dominion government at Ottawa, April 4–17, and negotiations on the bases for confederation were continued after this. By the close of this RECORD, however, the hopelessness of any agreement on the financial arrangements was generally admitted. — The **Australian federation** movement received a new impetus from the action of a conference of Australian premiers at Hobart, Tasmania, February 1. All the colonies were represented and resolutions were adopted declaring that federation was the great question in Australian politics, and that the method of bringing it about should be through a convention to frame a constitution, which, if ratified by popular vote in three or more colonies, should be submitted to the queen with a prayer for the necessary legislation by the British Parliament. A bill embodying the provisions necessary to carry this plan into effect was drafted for submission to each colonial legislature. — The matter of cotton duties in **India** (see this RECORD for June, 1894, p. 367) was settled by action of the Legislative Council in January, whereby the five per cent duty was imposed, but was accompanied by a countervailing excise on all the better grades of goods in which there was possibility of real competition by the Indian mills with those of Manchester. The excise was opposed by the solid vote of the non-official members of the council, and was supported by the officials only on the ground of direct orders from England. A war with the ruler of Chitral, a native kingdom on the northern frontier, was brought to a successful conclusion late in April.

FRANCE. — The instability of the French executive has been illustrated not only by the usual change of ministry, but also by another **change in the presidency.** The Dupuy ministry retained its position till the middle of January, though the weakness of the Moderates was indicated by the election of the Radical Brisson as president of the Chamber after the death of M. Burdeau, December 12. On the 13th of January M. Barthou, the minister of public works, resigned, on account of a decision by the council of state that the contracts of the government with certain railways guaranteed their securities until 1956, instead of only till 1914, as the government contended. The Radicals took up the subject the next day and on an interpellation defeated the ministry by 263 to 241. On the following day, January 15, the intention of President Casimir-Périer to resign his office was made public, and on the 16th the resignation was laid before the chambers. The communication indicated, rather than definitely declared, that the reasons for the action were, first, an intense irritation on account of the campaign of personal abuse which the Radical and Socialist press had kept up ever since Casimir-Périer's election, and second, an overwhelm-

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ing consciousness of the lack of real power, as compared with the moral responsibility, attaching to the presidential office. It was reported on apparently good authority that the attitude of the Dupuy cabinet toward the president had been such as to emphasize the insignificance of his office in the actual conduct of the government. The election at Versailles on the 17th resulted in the choice of M. Félix Faure, a Moderate, on the second ballot, by 460 votes, to 361 for M. Brisson, the Radical candidate. An incident of the excitement that prevailed during the three days of uncertainty was the issue of a manifesto by the Duc d'Orléans, from Dover, England, calling upon the Royalists to do what was most likely to preserve order, as the republic was only temporary, at the best. In fact most of the Royalists voted for Faure. An attempt to organize a **new ministry** on the concentration principle under M. Bourgeois, the Radical, proved unsuccessful, and recourse was then had to M. Ribot, who announced a ministry of Moderates, January 26. The new premier declared that his work would practically be limited to passing the budget. At the reassembling of the chambers, January 28, President Faure's inaugural message was presented. Its salient features were personal gratitude and confidence in French democracy. — The confusion in the executive rendered the session of the legislature fruitless of important legislation. The Ribot ministry signalized its assumption of power by the passage of a bill giving full amnesty for offenses against internal security, in respect to the press and public meetings, and in connection with elections and with strikes, and further for the misdeeds of priests who had interfered in politics. A notable result of this act was the return to France of M. Henri Rochefort, who had been for some time in exile. — The budget for 1895 was not adopted till April 13, provisional appropriations being made for the first four months. The scheme of tax reform proposed by M. Poincaré, of the Dupuy ministry, involving a progressive succession duty, had to be abandoned, and M. Ribot's final budget established an equilibrium by taking fourteen millions from the accumulations of the *Caisse des Dépôts et Consignations.*

GERMANY. — The Prussian cabinet reorganization which was in progress at the close of the last RECORD was completed during November by the appointment of Baron von Hammerstein as minister of agriculture and Dr. Schönstedt as minister of justice. — The Hohenlohe ministry has made no greater progress than did Caprivi in his later career toward securing a definite support for the government's policy in **the Reichstag.** That body assembled December 5 and took possession of its new building with due ceremony. The speech from the throne announced bills for the better maintenance of public security, for bourse regulation, for an imperial tobacco tax and for a general reform of the system of taxation as between the empire and the states. Only the first of these ("*Umsturzvorlage*") was new, and upon it attention was chiefly centered. The measure provided increased penalties for incitement to crimes of a revolutionary or anarchistic tendency, especially such as might affect military discipline, and made penal

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any public attacks through insulting expressions, and in a manner endangering the public peace, on "religion, the monarchy, marriage, the family or property." Opposition to the bill by the Socialists and Radicals was strong from the outset, and the key to the situation was held by the Clericals. This latter party succeeded in the committee in securing important amendments to the bill. Especial hostility on the part of the liberals was aroused by the amendment which penalized attacks on "the belief in God or the dogmas of the church," and by that which repealed the old *Kulturkampf* law forbidding the clergy to endanger the peace by political discussions in the pulpit. The debate on the second reading of the bill in the Reichstag began May 6, and on the 11th, after the principal clauses had been rejected by large majorities, the government abandoned the bill. The government's tobacco tax bill was likewise defeated May 13. Its other projects have reached no definite conclusion. The **agitation of the Agrarians** for relief to agriculture has been energetically carried on both within and without the Reichstag. The extremists of the party formulated their wishes in the Kanitz Bill, which proposed a government monopoly of the grain-importing business in Prussia, under regulations that would insure the raising of prices. This project was flatly opposed by the government. On the other hand the government's acceptance of the Reichstag's resolution of February 16 in favor of an international conference on the monetary situation was regarded as an effort to placate the bimetallist party among the Agrarians. Another act of concession to the agitation was the summoning of the Prussian state council, which met March 12 under the presidency of the emperor in person. The work of the council, whose sessions were secret, was to consider projects for raising the price of grain, sugar and spirits, for promoting the sale of agricultural products, for developing credit and for settling laborers in the rural districts. A host of propositions that had already been brought forward in the agitation of the Agrarians were laid before the council, but so far as made public the conclusions of that body went no further than an approval of the project of a monetary conference, a recommendation of an increase in the sugar bounty and of reductions in railway grain tariffs, and some resolutions of minor importance. The drastic and almost revolutionary measures urged by the leading Agrarians received no countenance from the council. — **Honor to Bismarck** has been a central point in both governmental policy and popular feeling during the period under review. Chancellor von Hohenlohe made an ostentatious pilgrimage to the old statesman at Friedrichsruh January 13. During the winter preparations were begun for an imposing demonstration in honor of Bismarck's eightieth birthday on April 1, and for two weeks or more about that date all Germany and many foreign lands rendered homage in a great variety of forms to the ex-chancellor. The emperor and his court were most conspicuous in the general enthusiasm, visiting Friedrichsruh with the most elaborate ceremony on March 26. A discordant note was sounded only in the refusal of the

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Reichstag, March 23, to send a formal and official congratulation to Bismarck. The proposition was defeated by 163 to 146, Socialists, Radicals, Poles, Guelphs and Clericals making up the majority. Much wrath was aroused by this incident. The emperor expressed to Bismarck his "profound indignation" at the Reichstag's action, and the Conservative president and National-Liberal vice-president of the body testified their anger by resigning their offices. It was at first supposed that the incident would lead to a dissolution of the Reichstag; but the emperor's reported expressions indicating such a purpose were afterwards disavowed. — The Prussian Diet, which opened January 15, was occupied chiefly with financial questions arising out of the standing deficit. Little progress was made toward a definite solution, owing to the connection of the matter with the unsettled questions of imperial finance and with the agricultural depression.

AUSTRIA-HUNGARY. — **Cisleithan political life** has been relatively uneventful. Premier Windischgrätz announced November 27 that, owing to difficulties that had arisen in connection with the government's Electoral Reform Bill, it had been resolved to frame a new and comprehensive measure in coöperation with representatives of the various parties in the Reichsrath. A committee was accordingly constituted which labored through the winter over the new project. The result of the labor has not been officially announced. In the Reichsrath the chief work of the session was a readjustment of taxation, involving the establishment of taxes on profits (*Erwerbsteuer*), corporations, rents and personal income. The municipal elections in Vienna in the latter part of March revealed a great development of anti-Semitism in that city. — In the Transleithan half of the dual monarchy there has been no lack of animated politics. **The ecclesiastical bills in Hungary** whose ultimate passage by the Magnates was noted in the last RECORD did not receive the royal signature till December 10. The long delay occasioned pronounced demonstrations of popular dissatisfaction, which turned to extravagant jubilation when the approval was made known. It shortly afterward was revealed, however, that the acceptance of the bills had involved the fall of the successful Wekerle ministry. On December 27 Dr. Wekerle announced his retirement because he lacked the full confidence of the king. A long crisis was eventually terminated, January 14, by the announcement of a cabinet headed by Baron Banffy, which differed not at all in principles from its predecessor. The important change was the ousting of several individuals whose Radical leanings made them especially objectionable to the court. The Banffy ministry announced that it would press the passage of the two ecclesiastical bills that had been rejected by the Magnates. On March 23, however, the upper house again (see last RECORD, p. 779) mutilated the Freedom of Worship Bill and rejected outright that recognizing the Jewish religion. About May 1 the lower house once more adopted the bills in their original form. The course of the Papal Nuncio Agliardi in denouncing the government's ecclesiastical policy called forth from Premier Banffy, May 1, a sharp rebuke, which in turn was severely

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commented upon by Count Kalnoky, imperial minister of foreign affairs. The crisis which resulted from the disagreement of the two ministers ended in the resignation of Count Kalnoky, who was succeeded, May 16, by Count Goluchowsky. — An important incident of the *Kulturkampf* has been the formation of a People's Party (*Volkspartei*), under the lead of the Catholic clergy. The platform of this party combines with the defense of religion a number of other purposes which give it an agrarian and Christian-Socialist character. Its membership is chiefly among the peasantry. — The extreme Radicals have found an opportunity for agitation in the return to Hungary of Francis Kossuth, son of the great revolutionist. Kossuth has accepted citizenship under the monarchy, but in other respects maintains the extreme policy of his father, and thus gives the Independence Party a name to conjure with. He was elected to Parliament in April.

ITALY. — The government's preparations for a profitable winter's work in the legislature involved a project for retrenchment in administration expenses to the amount of 43,000,000 lire, and a scheme of radical changes in the land system in Sicily and the southern districts of the mainland, where the agrarian discontent has of late been keen. But **the session of Parliament,** which opened December 3, was brought to an abrupt termination in less than two weeks through a revival of the Banca Romana scandal. From the outset the attacks of the Socialists and Radicals on the government were particularly violent, on account of Crispi's strong measures earlier in the year (see last RECORD). On the 11th, at the demand of the opposition, ex-Premier Giolitti produced a quantity of hitherto unpublished papers relating to the bank scandal. These documents, on examination by a Parliamentary committee, were found to include a number that seemed to implicate Crispi in compromising relations with the bank and its convicted director, Tanlongo. The prime minister at once denounced the documents as fabrications, and entered suit against Giolitti for libel and forgery. To the king he reported that the prospects of a fruitful session had been entirely destroyed by the development of a carefully planned conspiracy of falsehood and slander against the government, and he recommended prorogation. Accordingly, on the 16th the session was indefinitely prorogued, amid protests by the opposition against what they called a *coup d'état.* On January 21 the session was declared formally ended, and on May 8 the king decreed the dissolution of the chamber and appointed May 26 for new elections. — The treasury reports in February and March showed a very encouraging increase in receipts, so that the estimated deficit of 70,000,000 lire is likely to prove considerably smaller. — On the occasion of his birthday in March King Humbert granted an amnesty for a large number of press and political offenses, and especially for the lesser delinquencies during the disturbances a year ago in Massa Carrara and Sicily.

SPAIN. — The Sagasta cabinet struggled through the winter with some success in the midst of the difficulties with which its financial policy was beset. The outbreak of the insurrection in Cuba increased its embarrass-

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ment, and its career was definitely terminated by what seemed at first to be a serious **military disturbance at Madrid** in March. On the 16th of that month a body of officers, incensed at certain articles about the army, wrecked the offices of two newspapers in Madrid. In the excitement that ensued the cabinet could not unite on a policy to be adopted, some of the members justifying the officers and demanding rigorous press laws, and others desiring severe measures against the rioters. On the 17th the ministry resigned and General Martinez de Campos was proclaimed captain-general of Madrid. This officer's measures, backed by the knowledge of his character, quickly restored discipline in the army and order in the city. He declined to assume the functions of prime minister, however, and on the 23d a Conservative ministry was announced under Señor Canovas del Castillo. The differences between the journalists and the officers were settled by a general reconciliation, the former admitting the unwarranted bitterness of the attacks on the army, and the latter abandoning their demand that the writers be tried by court-martial. Having been assured of Sagasta's support in carrying through the budget, the new government devoted itself to the situation in Cuba. A large credit was demanded, and General de Campos was appointed governor-general of the province, whither he set sail with a large force on April 4. — Salvador Franch, the chief conspirator in the bomb-throwing plot at the Barcelona theater in 1893 (see this RECORD for June, 1894) was executed November 21.

RUSSIA. — The marriage of the new Czar, Nicholas II, with the Princess Alix of Hesse-Darmstadt was celebrated November 26. — The attitude and actions of the young ruler in political matters have been very closely scrutinized, with a view to detecting any change of general policy in a liberalizing direction. In the circular of November 9 to Russian ministers at foreign courts it was declared that internal development and external peace would be the principles of the new reign. The retirement of General Gourko from the governorship of Poland in December was hailed by the Poles as a great deliverance, in gratitude for which they celebrated the birthday of the Czar with exuberant enthusiasm. The Czar's letter of thanks to the retiring governor, however, betrayed no dissatisfaction with his policy. Count Shuvaloff, the successor of Gourko, signalized his assumption of office by several liberalizing changes in the Polish system. Rumors of an inclination in the Czar toward representative institutions were set definitely at rest by his declaration, January 29, in addressing a deputation of subjects: "I intend to protect the principle of autocracy as firmly and as unswervingly as did my late and never-to-be-forgotten father." A numerously-signed petition of journalists and literary men for a relaxation of the censorship, which has been particularly rigorous and vexatious of late, was refused by the Czar in the middle of April. — The autocratic method of dealing with the early steps to financial panics was illustrated in January, when the minister of finance published an official notice warning the public against the evils that would flow from the excessive speculation

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that was then prevalent on the St. Petersburg bourse. In addition, the leading bankers and brokers were summoned and directed to do what they could to stop the speculative fever, under penalty, in extreme cases, of having their establishments closed. According to the newspapers, this action had the effect of sending down rapidly the prices of the stocks principally concerned. — M. de Giers, the minister of foreign affairs, died January 26. His place was filled in February by the appointment of Prince Lobanoff.

MINOR EUROPEAN STATES. — In **Belgium** the leading questions of the period have been connected with the government's projects for regulating the communal franchise and for taking over the Congo State from the king. The Socialists made a vigorous opposition on both issues, and threatened a general strike if universal suffrage were refused. In April, however, the government's bill for an elaborate scheme of qualified suffrage was passed, with only a few demonstrations by the Socialists in the mining regions where strikes are perennial. — **A ministerial crisis in Norway** was precipitated by the final outcome of the elections in November, which left the Radicals still in control of the Storthing, though by a reduced majority. Legislative business was practically at a standstill throughout the period under review, since the king refused to dismiss the Conservative ministry. In February a compromise seemed likely as a result of a long conference between the king and the Radical leaders, but the scheme fell through on account of anti-Swedish demonstrations in the Storthing. At the beginning of April the king announced his final resolution not to form a Radical ministry, since the constitution did not oblige him to choose his advisers from the majority of the Storthing, and since such a choice at the present time would endanger the union with Sweden. The situation in May was regarded as very serious, and as threatening revolution. — On November 12 reports began to be received in western Europe of a great **massacre of Armenian Christians** by Turkish troops in the preceding summer. The matter soon became and has since remained the subject of general discussion in the press and in diplomatic circles. From the most trustworthy accounts the facts seem to be that the standing tension between Armenians and Kurds in the Sassun district, near the city of Mush, led to disturbances in which the Armenians were brought into an attitude of hostility to the Turkish local authorities. On the representations of the latter a considerable force of regular troops was concentrated by the Porte in the region, and the population of the disturbed region was practically exterminated, with circumstances of barbarity that recall the Bulgarian atrocities twenty years earlier. There seems to have been some ground for the Porte's contention that revolutionary agitators had been at work in the region, but it does not appear that they were responsible for the original disturbances. In December, as a result of the indignation expressed throughout Europe, the Porte appointed a commission of high officials to go to the scene of the trouble and investigate the whole matter.

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The investigation began about February 1, but no report had been made public at the close of this RECORD. — In **Servia** a judicial justification for the *coup d'état* of the preceding May (see last RECORD) was supposed to have been found in the trial of a number of Radicals on a charge of plotting to overthrow the king and put Prince Karageorgewitch on the throne. Six of the accused were convicted and sentenced to imprisonment. Experts in Servian politics suggested that the whole proceeding was merely designed to promote the government's success in the elections for the Skupschtina in April. At these elections the Radicals refrained from voting, on the ground of excessive governmental interference, and accordingly a huge ministerial majority was returned. The Assembly met April 22 and ratified the acts of the king in the last *coup d'état*. — Despite the official intimation that the new Czar would maintain the same attitude as his father toward **Bulgaria**, the Russophil tendencies of the Stoïloff ministry have remained conspicuous. At the beginning of January a general amnesty for political offences was enacted, in consequence of which M. Zankoff, the famous Russophil agitator, returned from exile and was received in audience by Prince Ferdinand. The animosity of the government against ex-Premier Stamboloff has been manifested in the charge that he was implicated in the murder of M. Beltscheff in 1891 (see this RECORD for June, 1891, p. 399). An order for his arrest in January aroused so much indignation both at home and abroad that it was not executed. — A new cabinet in **Greece**, headed by Nicholas Delyannis, assumed office after the resignation of Tricoupis, January 22. The occasion for the change was a difference of opinion between the government and the crown prince, who commanded the military in Athens, as to the course to be pursued in dealing with popular meetings to denounce the government's tax schemes. It is alleged that the real cause of M. Tricoupis's withdrawal was his despair of settling the financial questions with the existing legislature. An appeal to the electorate followed the crisis and resulted in the defeat of the Tricoupis party.

AFRICA. — In November an arrangement went into effect by which the police administration in **Egypt** was brought more under British influence and control. The whole police organization of the country was centered in the ministry of the interior, which was equipped with English advisers to guide its action. In February, at the instance of Lord Cromer, a special tribunal was created, with summary powers, to deal with offenses against members of the British army of occupation. The budget for 1895 showed an estimated surplus of nearly £700,000. — In Abyssinia the Italian forces have continued their progress inland from the coast, and by a series of victories over Ras Mangascia have established themselves in the chief towns of Tigre, the northernmost province of Abyssinia. — **War between France and Madagascar** resulted from the failure of the special mission of M. le Myre de Villiers (see last RECORD). The Hova government in October refused a satisfactory answer to the formal demands (1) that no relations with

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foreign governments and their agents should be maintained except through the French resident-general; (2) that no concession should be granted to any foreigner save with the resident's approval; (3) that the French should have the right to maintain in Madagascar a force sufficient to insure the safety of foreigners; and (4) that the French should be permitted to construct roads, railways, telegraphs, *etc.*, and to receive the revenue from them when the Hova government should fail to assume the expense of the works. Upon the failure of this ultimatum all the French residents left the capital, and preparations began in France for a military expedition. A war credit of 65,000,000 francs was voted November 26, but it was not till April that the main part of the expedition, under General Duchesne, set sail from Marseilles. Preliminary French victories on the coast were reported early in May.

CHINA AND JAPAN. — A continuation of Japan's military and naval successes during the winter brought the war between these powers to a triumphant end in April. The advance of the Japanese armies into Manchuria along the coast resulted, November 21–22, in the capture of China's most important naval station, Port Arthur, with vast military stores. The further land operations in this region were greatly retarded by the severity of the winter weather and by the somewhat increased energy of the Chinese. On March 5, however, the Japanese finally carried the important town of Newchwang, which had for some time been their objective. Meanwhile their fleet and a second army had moved against Wei-Hai-Wei, a strongly fortified port at the opposite (southern) entrance to the gulf of Pechili, and after severe fighting this place was captured, February 17, with all of the Chinese navy that escaped destruction. Long before this the efforts of the government of the United States, through its ministers in Pekin and Tokio, had been successful in opening the way to peace negotiations. In December the Chinese government decided to send plenipotentiaries to Japan, and asked ex-Secretary of State J. W. Foster to accompany them as adviser. The plenipotentiaries met the Japanese ministers at Hiroshima February 1, but on the following day were dismissed because the powers given in their credentials were unsatisfactory. After six weeks more of preliminary discussion through the American ministers, two commissioners with full powers were despatched to meet the Japanese ministers at Shimonoseki. On March 24, at the end of the third conference of the negotiators, Li Hung Chang, the chief Chinese representative, was seriously wounded by a pistol shot fired by a fanatical Japanese in the street. The regret of the Japanese Emperor for so serious an offense against international right was practically manifested in a much more concessive spirit, and the negotiations were greatly expedited. An armistice was agreed to, and on April 17 a treaty of peace was signed. The terms included the recognition of Corean independence; the cession to Japan of Formosa and some smaller islands, and the peninsula of Liao-Tung, including Port Arthur; a large war indemnity; and a very great relaxation of the restrictions on foreign industry and com-

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merce in China. After the modification of the territorial clauses, in deference to the European powers (see above, p. 375), ratifications were exchanged at Cheefoo, May 8. — Parliamentary proceedings in Japan have continued to be perfectly harmonious, under the influence of the national war spirit. The great military appropriations have been voted unanimously.

HAWAII. — An armed **uprising of royalists**, headed by former officers of the deposed queen, took place January 6. The government promptly adopted radical measures for its suppression, and after three days of desultory fighting near Honolulu all the active insurgents were either killed or captured. After the termination of hostilities the government made numerous arrests of royalist sympathizers, and on the 16th the ex-Queen Liliuokalani was taken into custody. On the 24th the latter formally renounced all her claims to the throne and swore allegiance to the republic. She was brought to trial, however, with a large number of her former adherents, on various charges connected with the uprising. The trials were by a military commission, and resulted in a large number of convictions. The ex-queen was found guilty of misprision of treason and was sentenced to five years' imprisonment. Extreme sentences imposed upon the active leaders in the uprising were mitigated by President Dole so that no execution occurred, imprisonment or banishment being substituted. By March 1 all the cases had been disposed of and normal conditions were fully restored.

LATIN AMERICA. — Several instances of **friction with European powers** have assumed prominence during the period under review. Venezuela's long-standing controversy with Great Britain over the boundary in the Orinoco region has attracted some attention on account of the resolution of the Congress of the United States endorsing President Cleveland's recommendation that the matter be submitted to arbitration. Venezuela has had trouble with other European countries in connection with claims for damages arising out of the civil disturbances. The German and Spanish ministers withdrew from Caracas during the winter, and in March the ministers of France and Belgium were peremptorily dismissed, on account of the publication of a paper which had been formulated, but never presented, reflecting severely upon the Venezuelan administration and demanding the establishment of mixed tribunals to pass upon foreigners' claims. Through the good offices of Italy progress toward a settlement of the difficulties was made in April. In March Spain brought about a settlement of the French claims against San Domingo which had caused a diplomatic rupture of two years' standing. — The action of Nicaragua in summarily expelling British subjects from the country in connection with the troubles on the Mosquito coast in the summer of 1894 (see last RECORD, p. 784) led to a peremptory demand by the British government, February 26, for £15,500 damages. Nicaragua's request for arbitration was ignored until this specific amount should be paid, as satisfaction for the treatment of a Mr. Hatch, who was held to have had an official character as British proconsul. As Nicaragua failed to comply with the demand, a British naval

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force, upon three days' notice, occupied the port of Corinto, on the Pacific, April 27, and proceeded to take the customs dues in order to satisfy the claim. No resistance was offered by the Nicaraguan authorities. On May 3 an agreement was reached by which Nicaragua undertook, under a guarantee of the government of Salvador, to pay the money within a fortnight, and accordingly two days later the British forces withdrew. — A boundary dispute between Mexico and Guatemala, which assumed a warlike aspect during the winter, was adjusted April 1 by treaty. — **Revolutionary uprisings** have occurred in Colombia, Peru and Cuba. That in the first-named state was declared suppressed in March. In Peru an unsettled political situation following the death of President Bermudez, in the spring of 1894, resulted in a formidable uprising in the winter against his successor, Caceres. On March 17 the insurgents, of whom Pierola was the chief leader, carried Lima by storm, put the government to flight and installed a provisional organization. In the last week of February a concerted movement by Cuban agitators in the United States and San Domingo resulted in the landing of a number of bands in Cuba, where a revolution was proclaimed. Desultory fighting has been going on ever since, and in May the rebels manifested themselves in considerable force. Martial law has been proclaimed by the government and large forces of troops have been concentrated in the threatened regions, mostly in the eastern end of the island. General Martinez Campos, having been appointed governor-general, reached Cuba in the middle of April. — The new president of Brazil, Prudente Moraes, took office quietly November 15. His policy was soon shown to be one of peace and reconciliation among the factions of the land, and it has thus far proved successful. An amnesty for political offenders was proclaimed early in his term, and considerable progress was made later in pacifying the disturbed state of Rio Grande do Sul. — In the Argentine Republic President Saenz Peña came into serious conflict with the Congress in January by refusing the latter's request for an amnesty for participants in the last insurrection. On January 22, after his cabinet had abandoned him and he had failed to find another, the president resigned his office. His resignation was accepted with but one dissenting vote, and Vice-President Uriburu assumed the vacant post.

WM. A. DUNNING.

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